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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

ALLEN BRADLEY COMPANY, ALLIS-CHALMERS MANUFACTURING COMPANY, CLARK CONTROLLER COMPANY, COLT'S PATENT FIRE ARMS MANUFACTURING COMPANY, CUTLER-HAMMER, INC., THE ELECTRIC CONTROLLER & MANUFACTURING COMPANY, GENERAL ELECTRIC COMPANY, MONITOR CONTROLLER COMPANY, SQUARE D COMPANY, TRUMBULL ELECTRIC MANUFACTURING COMPANY and WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY,

Plaintiffs-Appellees,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BERT KIRKMAN, individually and as President thereof, WILLIAM BECK, individually and as Treasurer thereof, HUGH MORGAN, individually and as Assistant Business Manager thereof, GEORGE W. WHITFORD, individually and as Recording Secretary thereof, JACOB S. SOLOMON, individually and as Business Agent thereof, and GERALD DUFFY, individually and as an Agent thereof,

Defendants-Appellants.

Statement Under Rule 13.

This action was commenced on December 9th, 1935, by the filing of a complaint, the due issuance of a subpoena by the Clerk of the United States District Court for the Southern District of New York, and the delivery of the original subpoena, together with a copy of the complaint to the United States Marshal on the 9th day of December, 1935.

There has been no change in the parties plaintiff in the above entitled action since the commencement of this action, except that the within action was discontinued by the following plaintiffs, National Electrical Manufacturers Association, Hardwick-Hindle, Inc., Palmer Electric & Manufacturing Co., and Rowan Controller Company, and

Statement Under Rule 13.

the same were dropped as parties plaintiff, pursuant to an order signed by Honorable Vincent L. Leibell, and filed in the Clerk's Office of the United States District Court for the Southern District of New York on the 11th day of March, 1939.

There has been no change in the parties defendant in the above entitled action since the commencement of this action, except that the name of the defendant, "John" Duffy was changed to Gerald Duffy, by consent of the parties and order of the Court. During the trial the defendant, George W. Whitford, died.

During the trial, and on May 2, 1939, Frank P. Walsh, Esq., defendants' chief counsel up to that time, died and from that time on the case has been handled by Harold Stern, Esq., the attorney of record who had acted as co-counsel.

By stipulations filed in the office of the Clerk of the United States District Court for the Southern District of New York on April 8, 1940, McLanahan, Merritt & Ingraham were substituted as attorneys for the plaintiffs in the place and stead of Gleason, McLanahan, Merritt & Ingraham.

On December 9, 1935, the original complaint was filed. The said complaint sought by way of relief a declaratory judgment, an injunction and monetary damages. On December 27, 1935, the attorneys for the plaintiffs and the defendants entered into a stipulation consenting to the amendment of the plaintiffs' complaint by deleting therefrom all reference to monetary damages. Said stipulation was filed with the Clerk of the District Court on December 28, 1935. On February 5, 1936, the defendants filed their answer to the original complaint, as amended.

Pursuant to an order of the District Court filed March 31, 1937, the plaintiffs on April 2, 1937 filed an amended complaint. On May 7, 1937, the defendants filed an answer to the amended complaint.

Statement Under Rule 13.

No arrests or attachments have been made in this action and no bail has been given.

Pursuant to a stipulation entered into between the attorneys for the plaintiffs and the attorneys for the defendants dated July 1, 1937, an order was signed by Honorable Vincent L. Leibell dated July 1, 1937 and filed in the Clerk's Office on July 2, 1937, appointing John Kirkland Clark, Esq., of the New York Bar, as Special Master to hear and determine all issues of law and fact in this case and to report thereon to the District Court with all convenient speed. Pursuant to said order a preliminary hearing was held before the Special Master on July 20, 1937. Thereafter, hearings were held before the Special Master on approximately 210 court days at which testimony of witnesses was taken, which hearings commenced October 14, 1937 and ended on March 7, 1940.

On the 2nd day of October, 1941, the Special Master filed his opinion holding in favor of the plaintiffs and requested the parties to submit proposed findings of fact and conclusions of law within twenty (20) days thereafter.

On October 23rd, 1941, the attorneys for the plaintiffs and defendants served their respective proposed findings of fact and conclusions of law upon the Special Master.

On November 23, 1942, the Special Master filed his decision, findings of fact and conclusions of law in which he held in favor of the plaintiffs, declaring that the defendants had violated the Act of Congress dated July 2, 1890 entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" together with the acts amendatory thereof and supplementary thereto, and that the plaintiffs were entitled to an injunction. The parties thereafter filed their respective objections to the findings of fact and conclusions of law of the Special Master and motions were brought on before Honorable Francis G. Caffey on behalf of the plaintiffs to confirm the decision.

10. *Statement Under Rule 13.*

findings of fact and conclusions of law of the Special Master, to sustain their objections and for counsel fees, and on behalf of the defendants to sustain the objections filed by them and to dismiss the complaint. Approximately twenty-two (22) hearings were held before Honorable Francis G. Caffey between March 1st, 1943 and June 10th, 1943, on the plaintiffs' motion to confirm the decision of the Special Master and the defendants' motion to sustain its objections filed to the Special Master's decision, findings of fact and conclusions of law.

During the course of the hearings, Judge Caffey modified certain of the findings of fact.

11 On June 10th, 1943, Judge Caffey rendered an opinion in which he confirmed the Special Master's decision by holding that the plaintiffs were entitled to a declaratory judgment declaring that the plaintiffs had violated the Act of Congress dated July 2, 1890 entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" together with the acts amendatory thereof and supplementary thereto, and to an injunction. In the same opinion, Judge Caffey denied plaintiffs' application for counsel fees. The opinion was filed on June 15, 1943.

On September 23rd, 1943, Judge Caffey signed a final decree and declaratory judgment, which was filed in the Clerk's Office on the same date.

Pursuant to the final decree and declaratory judgment the Clerk of the Court issued a Writ of Injunction on the
12 24th day of September, 1943.

Notice of appeal on behalf of all of the defendants was filed on the 21st day of December, 1943.

13

Bill of Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, ALLEN BRADLEY CO., ALLIS-CHALMERS MANUFACTURING COMPANY, CLARK CONTROLLER COMPANY, COLT'S PATENT FIRE ARMS MFG. CO., CUTLER-HAMMER, INC., THE ELECTRIC CONTROLLER & MFG. CO., GENERAL ELECTRIC COMPANY, HARDWICK-HINDLE, INC., MONITOR CONTROLLER COMPANY, PALMER ELECTRIC & MFG. CO., THE ROWAN-CONTROLLER COMPANY, SQUARE D CO., TRUMBULL ELECTRIC MANUFACTURING CO., WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY,

14

Plaintiffs,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BERT KIRKMAN, individually and as President thereof, WILLIAM BECK, individually and as Treasurer thereof, HUGH MORGAN, individually and as Assistant Business Manager thereof, GEORGE W. WHITFORD, individually and as Recording Secretary thereof, JACOB S. SOLOMON, individually and as Business Agent thereof, and JOHN DUFFY, individually and as an Agent thereof,

Defendants.

15

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The plaintiffs above named, for their Bill of Complaint, herein, respectfully show:

1. The plaintiff, National Electrical Manufacturers Association, is an unincorporated association, having a mem-

bership composed of more than 400 persons, firms and corporations engaged in the business of manufacturing for sale or promoting the manufacture for sale of electrical apparatus and supplies in interstate commerce throughout the United States, and having its office and principal place of business at No. 155 East 44th Street, in the City, County and State of New York. Said association operates and during all times hereinafter mentioned has operated under a constitution and by-laws and through officers and agents. One of the objects of said association is to protect and act for its members in connection with matters of business, trade and commerce affecting or which might affect
17 a substantial proportion of said members, and said association is duly authorized by a resolution adopted pursuant to its constitution and by-laws to institute and maintain the above-entitled action.

The plaintiff, Allen Bradley Co., is a corporation organized and existing under the laws of the State of Wisconsin and has its principal place of business at Milwaukee, Wisconsin.

The plaintiff, Allis-Chalmers Manufacturing Company is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at Milwaukee, Wisconsin.

The plaintiff, Clark Controller Company, is a corporation, organized and existing under the laws of the State of Ohio and has its principal place of business at Cleve-
18 land, Ohio.

The plaintiff, Colt's Patent Fire Arms Mfg. Co., is a corporation organized and existing under the laws of the State of Connecticut and has its principal place of business at Hartford, Connecticut.

The plaintiff, Cutler-Hammer, Inc., is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at Milwaukee, Wisconsin.

The plaintiff, The Electric Controller & Mfg. Co., is a corporation organized and existing under the laws of the State of Ohio and has its principal place of business at Cleveland, Ohio.

The plaintiff, General Electric Company, is a corporation organized and existing under the laws of the State of New York and has its principal place of business at Schenectady, New York.

The plaintiff, Hardwick-Hindle, Inc., is a corporation organized and existing under the laws of the State of New Jersey and has its principal place of business at Newark, New Jersey.

The plaintiff, Monitor Controller Company, is a corporation organized and existing under the laws of the State of Maryland and has its principal place of business at Baltimore, Maryland.

The plaintiff, Palmer Electric & Mfg. Co., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at Waltham, Massachusetts.

The plaintiff, The Rowan-Controller Company, is a corporation organized and existing under the laws of the State of Maryland, and has its principal place of business at Baltimore, Maryland.

The plaintiff, Square D Co., is a corporation organized and existing under the laws of the State of Michigan and has its principal place of business at Detroit, Michigan.

The plaintiff, Trumbull Electric Manufacturing Co., is a corporation organized and existing under the laws of the State of Connecticut and has its principal place of business at Plainville, Connecticut.

The plaintiff, Westinghouse Electric & Manufacturing Company, is a corporation organized and existing under the laws of the State of Pennsylvania and has its principal place of business at East Pittsburgh, Pennsylvania.

2. Upon information and belief:

The defendant, Local Union No. 3, International Brotherhood of Electrical Workers is, and at all times hereinafter mentioned was, a voluntary unincorporated association of several thousand members, its membership being composed of journeymen electricians and electrical workers. Said Local Union operates, and during all times hereinafter mentioned operated, under by-laws and through elected officers and agents, and derives, and at all the times hereinafter mentioned did derive, a large income from dues and assessments paid by its members, and claims, and at all times hereinafter mentioned, did claim jurisdiction
23 over all the work involved in connection with the installation of electrical fixtures, apparatus and equipment in buildings or structures throughout the territory covered by Greater New York and Long Island, hereinafter referred to as the Metropolitan area, as well as all work involved in the assembling and wiring of such electrical fixtures, apparatus and equipment (excluding electric lighting fixtures) within said area. Said Local Union No. 3 is the only union of electrical workers within said area the members whereof perform installation and wiring work of the types above described and is affiliated with a national organization or association made up of similar local unions and known as the International Brotherhood of Electrical Workers hereinafter referred to as the "In-
24 ternational Brotherhood."

The defendant, Bert Kirkman, is the President of Local Union No. 3 aforesaid; the defendant William Beck is the treasurer thereof; the defendant George W. Whitford, is the recording secretary thereof; the defendant, Jacob S. Solomon, is a business agent thereof; and the defendant, John Duffy, an agent thereof, to wit, an official organizer for said local union. All of the aforesaid individual defendants are citizens of, and reside within, the

State of New York and said defendants, Bert Kirkman, George W. Whitford and Hugh Morgan are residents and inhabitants of the Southern District of New York.

Said Local Union No. 3 maintains its general office and headquarters for the transaction of its business at 130 East 25th Street, in the City of New York, and within the territorial jurisdiction of the Federal Court for said Southern District of New York.

3. The jurisdiction of this Court herein is dependent upon the facts alleged in this paragraph, to wit:

A controversy exists between the plaintiffs and the defendants, the issues wherein involve the interpretation, application and enforcement of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", together with acts amendatory thereof and supplementary thereto. By reason of said controversy, the plaintiffs seek a declaration as to their rights in the premises pursuant to Section 274 (d) of the Judicial Code, and in addition further relief thereunder in the form of an injunction against the unlawful acts of the defendant hereinafter complained of, the plaintiffs having no adequate remedy at law.

4. The plaintiffs aforesaid other than National Electrical Manufacturers Association as well as a substantial number of the members of such association are each similarly and irreparably injured or threatened with irreparable injury by reason of the combination and conspiracy hereinafter described and their rights to conduct their respective businesses without interference or molestation through the unlawful conduct of the defendants hereinafter complained of are similarly impaired or threatened with impairment by reason of said combination and conspiracy which is directed against all of them, and said

National Electrical Manufacturers Association as an association is likewise irreparably injured and threatened with irreparable injury as a direct result of the wrongs and threatened wrongs to its members aforesaid. It is for these reasons, among others, that the plaintiffs herein including said National Electrical Manufacturers Association have united as co-plaintiffs in this action seeking identical relief by way of declaratory judgment and injunction and damages against the aforesaid combination and conspiracy and the unlawful acts done in furtherance thereof.

29 5. Each and every one of the plaintiffs above named, other than National Electrical Manufacturers Association, and each and every member thereof, against whom said combination and conspiracy is aimed, is and at all times hereinafter mentioned has been engaged in the business of manufacturing and selling in interstate and foreign commerce electrical appliances of one or more kinds, such as industrial control panels, motor starters, switchboards, electric panel boards, electric control apparatus, safety switches, cut-out boxes, rheostats, relays and magnetic contactors, hereinafter called "electrical equipment". Each and every one of said last mentioned plaintiffs, and each and every one of said members, has a substantial amount of money invested in its business and said plaintiffs and said members have at present in their employ in the aggregate many
30 thousands of employees the welfare of whom is dependent upon the freedom of their employers to carry on their respective businesses in interstate commerce without hindrance or molestation.

6. The products manufactured by the plaintiffs, other than National Electrical Manufacturers Association, as well as the products of the above-mentioned members of said association, are well and favorably known to building own-

ers, contractors, builders and architects throughout the United States and particularly in the Metropolitan area aforesaid, and at all times herein set forth there existed a large potential market for said products within said Metropolitan area, of which said plaintiffs, as well as the members of National Electrical Manufacturers Association aforesaid, have at all times been and now are prepared to take advantage, and through which they are and have been prepared to increase their respective businesses by a very great volume of interstate sales if permitted to enjoy the usual and natural opportunities for securing customers in interstate trade for their products without obstruction, interference or molestation on the part of the defendants above named, as hereinafter set forth. The liberty of the plaintiffs, other than National Electrical Manufacturers Association and each of them, and of the members thereof hereinabove referred to and each of them, to enter any and all markets including the market in the Metropolitan area aforesaid, and to enjoy and profit by the large amount of business there available to them, and each of them, if competition in interstate commerce were unrestrained, and the interest of each of them in the liberty of contractors, owners and others freely to purchase the products manufactured and offered for sale by them and each of them in free and open competition in interstate commerce constitute valuable property rights of said respective plaintiffs other than National Electrical Manufacturers Association and of the respective members thereof hereinabove referred to, which rights are secured to them, and each of them, under the statutes of the United States.

7. On information and belief, within the Metropolitan area aforesaid, and particularly within the City of New York, all crafts in the building and construction industry, which crafts are approximately thirty in number, are almost entirely unionized. As a result it is totally impra-

ticable for any owner, builder, building contractor, or electrical contractor within said area, and particularly within the City of New York, to install or have installed, against the protest of Local Union No. 3, in any new building or upon or in connection with any new operation or construction job, any electrical fixtures, apparatus or equipment, except all electrical work in connection with such installation be done by members of said Local Union No. 3 since to employ non-union electricians for such purposes, or any of them, contrary to the wishes of said union would inevitably result in sympathetic strikes by all other unionized trades working upon or in connection with the building,
35 operation or construction job involved.

In addition, practically every electrical contractor carrying on a business of any substantial size within the Metropolitan area aforesaid is a party to a certain agreement between the leading electrical contractors in said area and defendant Local Union No. 3, providing, in substance, for the exclusive employment of members of said Union in connection with all work over which the International Brotherhood of Electrical Workers claims jurisdiction.

It is further provided in said agreement that all "electrical equipment" required by any such electrical contractor, must, in order to have the same installed by members of Local Union No. 3, be purchased by such electrical contractor and not by the owner, builder or general contractor involved and said defendants through their said
36 control over said electrical contractors do further require and coerce said contractors not to purchase any "electrical equipment" which is wired or assembled wholly or partly by non-union men outside the Metropolitan area.

8. None of the members of the defendant Local Union No. 3 aforesaid, nor any of the other defendants above named, have been at any of the times hereinafter referred to, nor are they now, employees of the plaintiffs or any of

them or of any of the members of said National Electrical Manufacturers Association hereinabove referred to in their respective factories, and this suit is not a suit between employers and employees arising out of differences between any of the plaintiffs and the defendants or any of said members and the defendants with respect to the terms or conditions of employment.

9. On information and belief, from about December, 1933, the defendants above named, and other persons and parties to the plaintiffs unknown, have been and now are engaged in a combination and conspiracy contrary to the law of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", commonly known as The Sherman Anti-Trust Law, and laws amendatory thereof and supplementary thereto, to prevent and restrain the plaintiffs and those members of National Electrical Manufacturers Association hereinabove referred to from engaging in interstate trade and commerce in the sale and supply of "electrical equipment" within the Metropolitan Area aforesaid, and thus to injure them and each of them and injure and destroy the good-will, trade and business of each of them.

10. On information and belief, in furtherance of said combination and conspiracy, the defendants aforesaid and those confederated with them have (with the specific intent by means thereof to prevent and restrain the plaintiffs and those members of National Electrical Manufacturers Association last hereinabove referred to from engaging in the sale of "electrical equipment" in interstate commerce), unlawfully agreed upon, done and performed numerous acts, including, among others, those next hereafter described, all of which acts said defendants threaten to continue in the future unless enjoined and restrained from so doing.

(a) They have required journeymen, electricians, members of defendant Local Union No. 3 not to connect, install, work upon or handle within the aforesaid Metropolitan Area, "electrical equipment" manufactured and sold in interstate commerce by any of the plaintiffs or by any of the aforesaid members of National Electrical Manufacturers Association, and have threatened each member of said defendant Local Union No. 3 with punishment in the form of fines, expulsions or other disciplinary measure in the event that he should connect, handle, install or work upon said "electrical equipment" manufactured by any of the said plaintiffs or members of said National Electrical Manufacturers Association.

(b) They have from time to time, in various ways declared to builders, prospective builders, architects, building contractors and sub-contractors, including particularly electrical contractors, within the Metropolitan Area aforesaid, that "electrical equipment" produced by any of the plaintiffs or of any of the members of National Electrical Manufacturers Association hereinabove referred to, if purchased by any prospective customer, would not be connected, installed, handled or worked upon by members of the defendant Local Union No. 3, and that consequently such equipment could not be used within said Metropolitan Area, and have thus prevented architects from specifying such "electrical equipment" and have prevented builders, owners, contractors, sub-contractors and particularly electrical contractors from purchasing or agreeing to purchase such "electrical equipment".

(c) They have attempted to bring about and have brought about a condition whereby owners, builders, architects, contractors and sub-contractors, including electrical contractors who, in the ordinary course of

their respective businesses desire to or are obliged to purchase "electrical equipment" manufactured by the plaintiffs or by the members of National Electrical Manufacturers Association aforesaid, and who in the absence of said combination and conspiracy would purchase the same from the plaintiffs or said members of National Electrical Manufacturers Association, are coerced by the fear of strikes, Labor troubles and boycotts to refrain from purchasing "electrical equipment" manufactured by any of the plaintiffs or by any of said members for use within the Metropolitan area aforesaid.

(d) They have wilfully and repeatedly through 44
threats of strikes and labor difficulties, induced and attempted to induce owners, builders, contractors, subcontractors and particularly electrical contractors under contract to purchase "electrical equipment" manufactured by certain of the plaintiffs or by certain of the members of National Electrical Manufacturers Association aforesaid, to violate, breach and repudiate said contracts and have by various means sought to prevent and have prevented them from carrying out such contracts.

(e) They have at times issued orders, regulations and requirements binding on the members of Local Union No. 3 that certain types of electrical equipment made by plaintiffs may be installed and used pro- 45
vided only that after said equipment has been completely assembled and wired in the factory for the purpose of factory tests, it shall be disasembled and partially unwired by the plaintiffs in their respective factories, and shipped in the Metropolitan area in said unfinished state, and in such cases, they have by the means stated in this complaint, prevented the sale and use of electrical equipment made by the plaintiffs, except upon compliance with said condition.

11. The character of the unlawful acts done by the defendants pursuant to the combination and conspiracy hereinabove described, is such that the respective property rights of the plaintiffs, and of those members of National Electrical Manufacturers Association hereinabove referred to who are injured by such acts, to continue to engage in interstate commerce without molestation or interference, cannot be protected by the police or other public officers ordinarily charged with the duty of protecting property, and said plaintiffs and the aforesaid members of said association will suffer great and irreparable damage unless the above-described combination and conspiracy, and the
47 acts done by the defendants in furtherance thereof, be declared to be unlawful, and (inasmuch as said plaintiffs and the aforesaid members of said association have no adequate remedy at law) an injunction in the form hereinafter prayed for be granted.

12. The plaintiffs and those members of National Electrical Manufacturers Association hereinabove referred to have complied with all obligations imposed upon them by the statutes of the United States with reference to the matters herein complained of, and have made all reasonable efforts to adjust the differences existing between them and the defendants hereinabove described and any further efforts at settlement would be futile and unavailing. With respect to any and all relief herein sought, the denial of
48 such relief will inflict greater injury upon the plaintiffs and the members of National Electrical Manufacturers Association aforesaid than will be inflicted upon the defendants by the granting thereof.

WHEREFORE, the plaintiffs demand judgment against the defendants as follows:

A. That, as provided in Section 274 (d) of the Judicial Code, this Court declare the said conspiracy and all the

acts done in furtherance thereof as aforesaid, to be unlawful and contrary to the Act of Congress of July 2, 1890 entitled an "Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", commonly known as The Sherman Anti-Trust Law, as amended and supplemented.

B. That as and for further relief pursuant to Section 274 (d) of the Judicial Code, aforesaid (there being no adequate remedy at law in the premises), the defendants, Local Union No. 3, International Brotherhood of Electrical Workers, Bert Kirkman, individually and as President thereof, William Beck, individually and as Treasurer thereof, Hugh Morgan, individually and as Assistant Business Manager thereof, George W. Whitford, individually and as Recording Secretary thereof, Jacob S. Solomon, individually and as Business Agent thereof, and John Duffy, individually and as an Agent thereof, and their and each of their agents, servants, attorneys and confederates and the members of said Local Union No. 3 and all persons acting in aid of or in conjunction with them, or any of them, be perpetually enjoined and restrained from in any manner combining and conspiring to obstruct, restrain or interfere with the interstate trade or commerce of the plaintiffs and the members of National Electrical Manufacturers Association hereinabove referred to in any one or more of the electrical products manufactured by them or any of them, such as industrial control panels, motor starters, switchboards, electrical panel boards, electric control apparatus, safety switches, cut-out boxes, rheostats, relays and magnetic contactors, by any of the following acts, means or methods, to wit:

(a) Inducing or seeking or attempting to induce any person, firm or corporation to refrain from purchasing or from agreeing to purchase industrial control panels, motor starters, switchboards, electric panel

boards, electric control apparatus, safety switches, cut-out boxes, rheostats, relays and magnetic contactors, or any of the same from any of said plaintiffs or said members.

(b) Inducing or seeking or attempting to induce any person, firm or corporation to refrain from performing or carrying out any contract, agreement or understanding, whether oral or in writing, for the purchase from any of the plaintiffs or from any of the members of National Electrical Manufacturers Association aforesaid of any of the electrical products enumerated and described in subdivision (a) of the foregoing.

53 (c) In any manner whatsoever diverting or seeking or attempting to divert from any of the plaintiffs or any of the members of said last named Association any business, contracts, or orders relating to the aforesaid electrical products of said plaintiffs or said members, or any of them, upon the ground that the assembling and wiring of such products are wholly or partially performed in the respective factories of said plaintiffs and said members by workmen who are not members of the International Brotherhood of Electrical Workers.

(d) In any manner or by or through any acts or means preventing the plaintiffs and the members of 54 said Association from securing orders for or making sales of any of the electrical products manufactured by them as described in subdivision (a) of the foregoing, or any of them, upon the ground that such products are wholly or partially assembled and wired in the respective factories of said plaintiffs and said members outside the Metropolitan Area aforesaid.

(e) Inducing, ordering or in any manner or by or through any means or methods requiring any owner,

builder, contractor, electrical contractor or other possible or potential purchaser of any of the electrical products enumerated in subdivision (a) aforesaid to execute or enter into or to observe, carry out or perform any contract, agreement or understanding which in substance or effect requires such owner, builder, contractor, electrical contractor or purchaser not to purchase such products from any of the plaintiffs or any of said members.

(f) Inducing, ordering, directing or requiring any person or persons to refuse to handle, connect, install or work upon any of the electrical products enumerated in subdivision (a) of the foregoing, manufactured by the plaintiffs and the members of National Electrical Manufacturers Association aforesaid, or any of them, while said person or persons are permitted to handle, connect, install or work upon similar products made, wired, assembled or sold, by any competing manufacturer or manufacturers within the Metropolitan Area aforesaid.

(g) Adopting, promulgating, maintaining or enforcing any rule or regulation forbidding the members of the defendant Local Union No. 3 or any of them to handle, connect, install, wire, assemble or work upon any of the electrical products described in subdivision (a) hereinabove referred to, manufactured by any of the plaintiffs or any of the members of National Electrical Manufacturers Association aforesaid, and from fining, expelling or otherwise disciplining any of said members for disobeying any such rule or regulation.

(h) From inducing, ordering, directing or requiring any person or persons not to handle or install the aforesaid products, unless after being completely wired

and assembled by the plaintiffs, or the aforesaid members of the Association, in their respective factories, said equipment is disassembled and partially unwired and shipped into said Metropolitan area in said unfinished state.

C. That a temporary injunction of the same tenor and effect issue out of this Court to continue in full force and effect until the trial of this action.

D. That plaintiffs and each of them recover their damages to be assessed in such manner as this Court may direct.

59

E. That the plaintiffs and each of them, recover their respective costs and disbursements in this action and have such other and further relief as to this Court may seem just and proper.

GLEASON, MCLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs,
Office & P. O. Address,
No. 40 Wall Street,
Borough of Manhattan,
City of New York.

WALTER GORDON MERRITT,
60 Counsel.

(Verified December 6, 1935.)

61

Stipulation Amending Bill of Complaint.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that the bill of complaint be and the same is hereby amended as of course in the following particulars:

The words "and damages" appearing in the last sentence of paragraph four are deleted.

62

Paragraph D of the prayer for relief, reading as follows, is deleted:

"D. That plaintiffs and each of them recover their damages to be assessed in such manner as this court may direct."

Paragraphs A and B of the prayer for relief are amended to correct a typographical error in the number of the section of the Judicial Code therein referred to. As amended, the number reads:

"Section 274(d)."

Dated: December 27, 1935.

63

GLEASON, MCLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs.

FRANK P. WALSH & HAROLD STERN,
Attorneys for Defendants.

64

Answer to Bill of Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The defendants, Local Union No. 3, International Brotherhood of Electrical Workers, Bert Kirkman, individually and as President thereof, William Beck, individually and as Treasurer thereof, Hugh Morgan, individually and as Assistant Business Manager thereof, George W. Whitford, individually and as Recording Secretary thereof, Jacob S.
65 Solomon, individually and as Business Agent thereof, and John Duffy, individually and as an Agent thereof, for their answer, respectfully allege:

FIRST: Deny knowledge or information sufficient to form a belief thereof, as to each and every allegation contained in paragraph designated and numbered "1" of the complaint.

SECOND: Admit each and every allegation contained in paragraph designated and numbered "2" of the complaint, except that the defendants deny that Local Union No. 3, International Brotherhood of Electrical Workers did not claim jurisdiction over electric lighting fixtures, as alleged in paragraph designated and numbered "2" of the com-
66 plaint.

THIRD: Deny, upon information and belief, the allegations contained in paragraph designated and numbered "3" of the complaint, which allege "a controversy exists between the plaintiffs and the defendants, the issues wherein involve the interpretation, application and enforcement of the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints

and Monopolies' together with Acts Amendatory thereof and Supplementary thereto", and, therefore, further deny, upon information and belief, that this Court has any jurisdiction.

By reason of the aforesaid denial, the defendants deny that the plaintiffs are legally entitled to seek a declaration of their rights pursuant to Section 274(d) of the Judicial Code, or any further relief in the form of an injunction.

FOURTH: Deny each and every allegation contained in paragraph designated and numbered "4" of the complaint.

FIFTH: Deny the allegation contained in paragraph designated and numbered "5" of the complaint, which alleges 68
that a combination and conspiracy is aimed against the plaintiffs.

Deny, upon information and belief, the allegations contained in paragraph designated and numbered "5" of the complaint, which allege that each of the plaintiffs, other than National Electrical Manufacturers Association, and each and every member thereof, "is and at all times hereinafter mentioned has been engaged in the business of manufacturing and selling in interstate and foreign commerce electrical appliances of one or more kinds, such as industrial control panels, motor starters, switch-boards, electric panel boards, electric control apparatus, safety switches, cut-out boxes, rheostats, relays and magnetic contactors, hereinafter called 'electrical equipment' ". 69

Deny knowledge or information sufficient to form a belief thereof, as to the allegation contained in paragraph designated and numbered "5" of the complaint, which alleges that "each and every one of the plaintiffs has a substantial amount of money invested in its business and said plaintiffs and said members have at present in their employ in the aggregate many thousands of employees the welfare of whom is dependent upon the freedom of their

employers to carry on their respective businesses in interstate commerce without hindrance or molestation".

SIXTH: Deny knowledge or information sufficient to form a belief thereof, as to the allegations contained in paragraph designated and numbered "6" of the complaint, which allege that "the products manufactured by the plaintiffs, other than National Electrical Manufacturers Association, as well as the products of the above mentioned members of said association, are well and favorably known to building owners, contractors, builders and architects throughout the United States and particularly in the Metropolitan area aforesaid, and at all times herein set forth there existed a
71 large potential market for said products within said Metropolitan area, of which said plaintiffs, as well as the members of National Electrical Manufacturers Association aforesaid, have at all times been and now are prepared to take advantage, and through which they are and have been prepared to increase their respective businesses by a very great volume of interstate sales if permitted to enjoy the usual and natural opportunities for securing customers in interstate trade for their products without obstruction, interference or molestation on the part of the defendants above named, as hereinafter set forth".

Deny, upon information and belief, each and every allegation contained in paragraph designated and numbered "6" of the complaint, which alleges that "the liberty of the
72 plaintiffs, other than National Electrical Manufacturers Association and each of them, and of the members thereof hereinabove referred to and each of them, to enter any and all markets including the market in the Metropolitan area aforesaid, and to enjoy and profit by the large amount of business there available to them, and each of them, if competition in interstate commerce were unrestrained, and the interest of each of them in the liberty of contractors, owners and others freely to purchase the products manufac-

tured and offered for sale by them and each of them in free and open competition in interstate commerce constitute valuable property rights of said respective plaintiffs other than National Electrical Manufacturers Association and of the respective members thereof hereinabove referred to, which rights are secured to them and each of them, under the statutes of the United States".

SEVENTH: Deny, upon information and belief, each and every allegation contained in paragraph designated and numbered "7" of the complaint, which alleges that "within the Metropolitan area aforesaid, and particularly within the City of New York, all crafts in the building and construction industry, which crafts are approximately thirty in number, are almost entirely unionized". "As a result it is totally impracticable for any owner, builder, building contractor, or electrical contractor within said area, and particularly within the City of New York, to install or have installed, against the protest of Local Union No. 3, in any new building or upon or in connection with any new operation or construction job, any electrical fixtures, apparatus or equipment, except all electrical work in connection with such installation be done by members of said Local Union No. 3, since to employ non-union electricians for such purposes, or any of them, contrary to the wishes of said union would inevitably result in sympathetic strikes by all other unionized trades working upon or in connection with the building, operation or construction job involved".

Deny the allegation contained in paragraph designated and numbered "7" of the complaint, which alleges: "In addition, practically every electrical contractor carrying on a business of any substantial size within the Metropolitan area aforesaid is a party to a certain agreement between the leading electrical contractors in said area and defendant Local Union No. 3, providing, in substance, for the exclusive employment of members of said Union in con-

nection with all work over which the International Brotherhood of Electrical Workers claims jurisdiction".

Deny the allegations contained in paragraph designated and numbered "7" of the complaint, which allege that "the defendants through their said control over said electrical contractors do further require and coerce said contractors not to purchase any 'electrical equipment' which is wired or assembled wholly or partly by non-union men outside the Metropolitan area".

EIGHTH: Deny each and every allegation contained in paragraph designated and numbered "8" of the complaint.

77 NINTH: Deny each and every allegation contained in paragraphs designated and numbered "9", "10", "11", and "12" of the complaint.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE,

to the bill of complaint, the defendants allege:

TENTH: That the plaintiffs have an adequate remedy at law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE,

to the bill of complaint, the defendants allege:

ELEVENTH: That this Court has no jurisdiction over the
78 subject matter set forth in the bill of complaint.

FOR A THIRD, SEPARATE AND DISTINCT DEFENSE,

the defendants allege:

TWELFTH: That at all times herein mentioned, International Brotherhood of Electrical Workers was and still is an unincorporated association and organization, with jurisdiction over all electrical wage workers in the United States and its possessions, the Dominion of Canada and

Newfoundland, consisting of an unlimited number of Local Unions acknowledging its jurisdiction and subject to its laws and usages, and having as one of its chief objects the organization of all electrical workers into Local Unions.

THIRTEENTH: That at all the times herein mentioned, the defendant, Local Union No. 3, International Brotherhood of Electrical Workers, is an unincorporated association and organization, consisting of approximately 6500 members, which was and still is a duly chartered Local Union of said International Brotherhood of Electrical Workers, and is subject to the Constitution, laws and usages of the International Brotherhood of Electrical Workers. 80

FOURTEENTH: That under the jurisdiction claimed by the International Brotherhood of Electrical Workers for each of its members, including each and every member of the defendant Local Union No. 3, International Brotherhood of Electrical Workers, is the manufacturing, assembling, testing, inspecting, rebuilding, and repairing of all electrical machines, switch-boards, panel boards, control boards, electrical devices, and all electrical apparatus in manufacturing and repair shops.

FIFTEENTH: That, upon information and belief, each and every one of the plaintiffs above named, and each and every member of the National Electrical Manufacturers Association, at all the times herein mentioned has been and still is 81 engaged in the business of manufacturing electrical equipment, over which both the International Brotherhood of Electrical Workers, as well as Local Union No. 3, International Brotherhood of Electrical Workers claimed and claim jurisdiction for their members.

SIXTEENTH: That the International Brotherhood of Electrical Workers, and the defendants, have attempted and

are attempting to organize and to secure for its members employment with each of the plaintiffs above named, and with each and every member of the National Electrical Manufacturers Association, and to create wages and working conditions for its members in the manufacturing of electrical equipment in the plants of the plaintiffs, and with each and every member of the National Electrical Manufacturers Association.

SEVENTEENTH: That the International Brotherhood of Electrical Workers, as well as the defendant Local Union No. 3, International Brotherhood of Electrical Workers, through their representatives, for the purpose of securing employment and creating wages and working conditions for its members as aforementioned, attempted to negotiate and did negotiate with the representatives of the plaintiffs for the employment of its members, but that the said representatives of the plaintiffs have refused and still refuse to enter into an agreement to employ the members of the International Brotherhood of Electrical Workers, as well as the members of the defendant, Local Union No. 3, International Brotherhood of Electrical Workers, and grant the said members working conditions and wages.

EIGHTEENTH: That by reason of the aforesaid this action is a controversy between Employers and Employees arising out of differences between them, with respect to terms or conditions of employment, the issues wherein involve the application of the Norris-LaGuardia Act (Title 29, Sections 101-15 Pocket Part, U. S. C. A.).

NINETEENTH: That within the contemplation of the said Norris-LaGuardia Act (Title 29, Sections 101-15 Pocket Part, U. S. C. A.) and the application and the interpretation placed thereon by the Court since its adoption by the Congress of the United States, the plaintiffs are not legally entitled to any injunction.

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WHEREFORE, the defendants, and each of them, demand judgment, dismissing the complaint, with costs.

FRANK P. WALSH
and
HAROLD STERN
Attorneys for Defendants,
Office and Post Office Address,
No. 70 Pine Street,
Borough of Manhattan,
City of New York.

(Verified January 27, 1936.)

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Order Granting Leave to File and Serve Amended Bill of Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

On the annexed stipulation and on motion of Gleason, McLanahan, Merritt & Ingraham, solicitors for the plaintiffs herein, it is hereby

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ORDERED that the plaintiffs have leave herein to file and serve upon the solicitors for the defendants the amended bill of complaint, copy of which is attached hereto, and it is further

ORDERED that the defendants shall have twenty days after the service upon their solicitors of such amended bill of complaint within which to file and serve their answer to such amended bill, and it is further

88 *Order Granting Leave to File and Serve*

ORDERED that the filing and service of such amended bill of complaint shall be without prejudice to the present date of joinder of issue herein and that this action shall retain its present position on the calendar of this Court.

Dated, New York, March 30th, 1937.

ALFRED C. COXE,
U. S. D. J.

Notice of settlement of the foregoing order is hereby waived.

89 FRANK P. WALSH & HAROLD STERN,
Solicitors for Defendants.

Amended Bill of Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW
90 YORK:

The plaintiffs above named, for their amended Bill of Complaint herein, on information and belief, respectfully show:

1. The plaintiff, National Electrical Manufacturers' Association, herein called "Manufacturers' Association," is and at all times herein mentioned was, an unincorporated association, having a membership composed of more than

400 persons, firms and corporations engaged in the business of manufacturing and selling, or promoting the manufacture for sale, of electrical equipment in interstate commerce, with its office and principal place of business at No. 155 East 44th Street, in the City, County and State of New York. Said association operates under, and during all times hereinafter mentioned has operated under, a constitution and by-laws and through officers and agents. One of the objects of said association is to act for its members in matters of business, trade and commerce affecting a substantial number of said members, and said association is duly authorized by a resolution adopted pursuant to its constitution and by-laws to institute and maintain the above entitled action in its name for the protection of its said members.

2. Plaintiff, Allen Bradley Co., is, and at all times herein mentioned was a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business in the City of Milwaukee and State of Wisconsin, where at all times herein mentioned it was, and now is, engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment hereinafter mentioned in paragraph 16.

3. Plaintiff, Allis-Chalmers Manufacturing Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the City of Milwaukee, and State of Wisconsin, where at all times herein mentioned it was, and now is, engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment hereinafter mentioned in paragraph 16.

4. Plaintiff, Clark Controller Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cleveland, and State of Ohio, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling industrial control apparatus, meaning thereby devices for the application, direction and control of electrical current. All of its said products were at the times herein mentioned, and now are, manufactured in the State of Ohio, and all of its sales and shipments thereof for use in the City of New York and vicinity were at the times herein mentioned,
95 and now are, made in interstate commerce.

5. Plaintiff, Colt's Patent Fire Arms Manufacturing Co., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in the City of Hartford, and State of Connecticut, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling electrical equipment such as "knife switches" and "enclosed switches", which are devices and apparatus used in connection with the application and distribution of electrical current. All of its said products were at the times herein mentioned, and now are, manufactured in the State of Connecticut, and all of its sales and shipments thereof for use in the City of New York
96 and vicinity were at the times herein mentioned, and now are, made in interstate commerce.

6. Plaintiff, Cutler-Hammer, Inc., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City of Milwaukee, and State of Wisconsin, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling elec-

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trical equipment, such as knife switches, enclosed switches and industrial control apparatus. All of the products manufactured by said plaintiff at its factory at Milwaukee, Wisconsin, and sold by it for use in the City of New York and vicinity were at all times herein mentioned, and now are, sold and shipped in interstate commerce.

In addition to its factory in Milwaukee, said plaintiff maintains, and at all times herein mentioned did maintain, a factory in the City of New York, where it manufactures, and at all times herein mentioned did manufacture, knife switches and safety switches.

7. Plaintiff, The Electric Controller and Mfg. Co. is, and 98
at all times herein mentioned was, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cleveland, and State of Ohio, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling knife switches, enclosed switches and industrial control apparatus. All of its said products were at the times herein mentioned, and now are, manufactured in the State of Ohio, and all of its sales and shipments thereof for use in the City of New York and vicinity were at the times herein mentioned, and now are, made in interstate commerce.

8. Plaintiff, General Electric Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of New York and 99
engaged in the business of manufacturing and selling electrical equipment and appliances of many kinds. Said plaintiff at all times herein mentioned maintained and operated, and now maintains and operates, a number of factories for the manufacture of its products, including the following: a factory in the City of Philadelphia, and State of Pennsylvania, for the manufacture of panel boards, distribution boards, power switches, knife switches, en-

closed switches and large and small air circuit breakers; a factory in the City of Lynn, in the State of Massachusetts, for the manufacture of electrical signalling apparatus; a factory in the City of Schenectady, in the State of New York, for the manufacture of industrial control apparatus and electrical wire and cable and other products; a factory in the City of Bridgeport, in the State of Connecticut, for the manufacture of electrical wire and cable and sockets for electrical fixtures, and a factory in the City of New Kensington, in the State of Pennsylvania, for the manufacture of rigid steel conduit for electrical purposes.

101 All of said electrical equipment produced and sold by said plaintiff for use in the City of New York and vicinity, with the exception of the industrial control apparatus and wire and cable produced at its factory in the City of Schenectady aforesaid, has at all times herein mentioned been, and now is, manufactured outside of the State of New York, and sold and shipped in interstate commerce.

9. The plaintiff, Hardwick-Hindle, Inc., is and at all times herein mentioned was, a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the City of Newark, and State of New Jersey, where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to
102 customers in New York City and vicinity, one or more of the types of electrical equipment hereinafter mentioned in paragraph 16.

10. The plaintiff, Monitor Controller Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Maryland with its principal place of business in the City of Baltimore, and State of Maryland, where at all times herein men-

tioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment hereinafter mentioned in paragraph 16.

11. The plaintiff, Palmer Electric & Mfg. Co., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business in the City of Waltham, and State of Massachusetts, where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling 104
in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment hereinafter mentioned in paragraph 16.

12. The plaintiff, The Rowan-Controller Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in the City of Baltimore, and State of Maryland, where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment hereinafter mentioned in paragraph 16.

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13. Plaintiff, Square D Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Michigan, with its principal place of business in the City of Detroit, and State of Michigan. Said plaintiff at all times herein mentioned maintained, and now maintains, a factory in said City of Detroit for the manufacture and sale of panel boards, distribution boards, knife switches, enclosed switches and

small air circuit breakers, and further maintained, and now maintains, a factory in the City of Milwaukee, and State of Wisconsin, for the manufacture and sale of electrical industrial control apparatus. All of the aforesaid products of the plaintiff were at the times herein mentioned, and now are, manufactured outside of the State of New York, and all of its sales and shipments thereof for use in New York City and vicinity were at the times herein mentioned, and now are, made in interstate commerce.

14. Plaintiff, Trumbull Electric Manufacturing Co., is, and at all times herein mentioned was, a corporation or-
107 ganized and existing under the laws of the State of Connecticut, with its principal place of business in the City of Plainville, and State of Connecticut, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling panel boards, knife switches, enclosed switches and industrial control apparatus. All of its said products were at the times herein mentioned, and now are, manufactured in the State of Connecticut, and all of its sales and shipments thereof for use in the City of New York and vicinity were at the times herein mentioned, and now are, made in interstate commerce.

15. Plaintiff, Westinghouse Electric and Manufacturing Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the
108 State of Pennsylvania, with its principal offices in the City of Pittsburgh, and State of Pennsylvania. Said plaintiff is, and at all times herein mentioned was, engaged in the business of manufacturing and selling electrical equipment and appliances of many kinds, including electric switchboards, electric panel boards, distribution boards, safety switches, cutout boxes, industrial control apparatus, lighting sockets and wire and cables. All of its said products were at the times herein mentioned, and now are, manufactured

outside of the State of New York, its principal plants being located in and about the City of Pittsburgh, aforesaid, and all of its sales and shipments thereof for use in the City of New York and vicinity have at all times herein mentioned been, and now are, made in interstate commerce.

16. All of the electrical equipment, devices and apparatus severally produced and manufactured by the plaintiffs other than the Manufacturers Association (which plaintiffs are herein referred to as manufacturing plaintiffs) and all of the electrical equipment, devices and apparatus produced by the members of said manufacturers association respectively as above set forth (including electric switchboards, electric panel boards, distribution boards, power switches, safety switches, knife switches, enclosed switches, cutout boxes, small and large air circuit breakers, motor starters and controllers and other industrial control apparatus, lighting fixtures, lighting sockets, signaling devices, conduits and wire and cable for the transmission of electrical current, which are herein collectively referred to as "Electrical Equipment") are, and at all times herein mentioned were, well and favorably known to building owners, contractors, builders, architects, engineers, dealers and other users and purchasers thereof throughout the United States, including those in the City of New York and vicinity which customarily purchase said products for use in said locality, and there now is, and at all times herein set forth there has been, a large and growing and profitable market for said "electrical equipment" to be used in the City of New York and vicinity, of which market said manufacturing plaintiffs and the members of the Manufacturers Association and each of them are and at all times were severally ready to take advantage through the sale of their respective products and thus not only to maintain, but to extend and increase their interstate trade and business therein, if permitted to enjoy the usual and natural oppor-

tunity of securing orders, contracts and customers for such electrical equipment in an open market without obstruction, interference or molestation from, and the erection of artificial barriers by, the defendants above named and their associates, as hereinafter set forth.

17. The defendant, Local Union No. 3, International Brotherhood of Electrical Workers, hereinafter called "Local 3," is, and at all times hereinafter mentioned was, a labor union and a voluntary unincorporated association of many thousand members who are journeymen electricians and electrical workers following their occupation in the
113 City of New York and vicinity. Said Local 3 operates, and during all times hereinafter mentioned operated, under by-laws and through elected and appointed officers and agents, and derives, and at all times herein mentioned did derive, a large income from dues and assessments paid by its members. Said Local 3 claims, and at all times herein mentioned did claim, jurisdiction over all work involved in the electrical wiring of buildings and structures and the installation of electrical fixtures, apparatus and equipment therein throughout the City of New York and the Western end of Long Island, herein referred to as the "Metropolitan Area," as well as the electrical work involved in the manufacture of electrical fixtures, apparatus and equipment to be used within said area. Said union maintains its general office and headquarters for the transaction
114 of its business in the Borough of Manhattan, and City of New York, in the Southern District of New York, and is the only important union of such electrical workers within said Metropolitan Area.

18. Local 3 is, and at all times herein mentioned was, affiliated with and a part of the International Brotherhood of Electrical Workers, hereinafter referred to as the "International Brotherhood," which is a voluntary unincorpo-

rated association and labor union of over a hundred thousand members, who are journeymen electricians and electrical workers, employed in different states of the United States. Said International Brotherhood is subdivided into numerous local unions, including Local 3, having their headquarters in various industrial centers in different states throughout the United States.

19. The defendant, Bert Kirkman, is the President of Local Union No. 3 aforesaid; the defendant William Beck is the treasurer thereof; the defendant Hugh Morgan is assistant business manager thereof; the defendant George W. Whitford, is the recording secretary thereof; the defendant, Jacob S. Solomon is a business agent thereof; and the defendant, John Duffy, is an agent thereof, to wit, an official organizer for said local union. All of the aforesaid individual defendants are citizens of, and reside within, the State of New York and said defendants, Bert Kirkman, George W. Whitford and Hugh Morgan are residents and inhabitants of the Southern District of New York. 116

20. The jurisdiction of this Court herein is dependent upon the facts alleged in this paragraph, to wit:

A controversy exists between the plaintiffs and the defendants, the issues wherein involve the interpretation, application and enforcement of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," together with acts amendatory thereof and supplementary thereto. By reason of said controversy, the plaintiffs seek a declaration as to their rights in the premises pursuant to Section 274(d) of the Judicial Code, and in addition further relief thereunder in the form of an injunction against the unlawful acts of the defendants hereinafter complained of, the plaintiffs having no adequate remedy at law. 117

21. The plaintiffs aforesaid, other than the Manufacturers Association, as well as a substantial number of the members of such association, are each similarly and irreparably injured or threatened with irreparable injury by reason of the combination and conspiracy hereinafter described and their rights to conduct their respective businesses without interference or molestation through the unlawful conduct of the defendants hereinafter complained of are similarly impaired or threatened with impairment by reason of said combination and conspiracy which is directed against each of them, and said Manufacturers Association as an association is likewise irreparably injured
119 and threatened with irreparable injury as a direct result of the wrongs and threatened wrongs to its members aforesaid. It is for these reasons, among others, that the plaintiffs herein, including said Manufacturers Association, have united as co-plaintiffs in this action seeking identical relief by way of declaratory judgment and injunction against the aforesaid combination and conspiracy and the unlawful acts done in furtherance thereof.

22. Within the Metropolitan Area aforesaid there are, and at all times herein mentioned have been, numerous electrical contractors, meaning thereby persons, firms and corporations engaged in the business of securing and performing contracts to furnish, install and connect electrical equipment for use in buildings and structures within said
120 area. The conduct of the respective businesses of said contractors requires the employment of skilled electricians such as the members of Local 3, and the purchase, sale and use of all of the various types of electrical equipment manufactured by the respective manufacturing plaintiffs and the members of said manufacturers association.

23. Over 90% of the aforesaid electrical contractors of any substantial size, doing work in the Metropolitan Area,

and substantially all electrical contractors performing electrical contracts of substantial size in buildings in said Area, are, and at all times herein mentioned have been union contractors working under agreements with Local 3. Every such agreement provides, and at all times herein mentioned has provided, for the exclusive employment by the electrical contractor of members of Local 3 in all branches of electrical work within the jurisdiction by said Local and further provides, and at all times herein mentioned has provided, that the electrical contractor, in carrying on its business within the Metropolitan Area, shall not enter into any contract covering solely the installation of electrical materials or equipment, but that every contract 122
entered into by said contractor for the installation of such materials or equipment must require that the same be supplied by the electrical contractor. These provisions requiring the purchase of materials and equipment by the electrical contractor exclusively are, and have been, inserted in all said contracts at the instance of Local 3, in order thereby to exclude the possibility of the selection and purchase of such materials or equipment by any engineer, architect, owner, builder, or general contractor, and in order to make it practicable for Local 3, by reason of its domination over electrical contractors within the Metropolitan Area, to dictate, name and control the manufacturers from whom electrical equipment may be purchased, and to boycott and prevent the purchase of any type of electrical equipment produced by the manufacturing plaintiffs and 123
the members of the Manufacturers Association, or any of them as hereinafter set forth.

All of said contractors entering into contracts with Local 3 and accepting said clause in reference to the purchase of electrical equipment and materials as aforesaid, did so well knowing that the purpose of Local 3, in demanding said clause, was to require said contractors to boycott electrical equipment not made by manufacturers through the em-

ployment of members of Local 3 within the Metropolitan Area, or not made by manufacturers through the exclusive employment for electrical work of members of the International Brotherhood, and said contractors thereby agreed among themselves and with Local 3 to boycott any person, firm or corporation which would not give them a contract for electrical equipment as well as for the installation thereof and thus to assist in boycotting and narrowing the market for electrical equipment not made by manufacturers through the employment of members of Local 3 within the restricted Metropolitan Area or not made through said exclusive employment of members of the In-
125 ternational Brotherhood. Said contractors accepted and continue to accept said clause for the reasons herein set forth and because they profited through forcing all purchases of electrical equipment to be made through them.

24. Most of the electrical contractors of substantial size located in the Borough of Manhattan in the City of New York, being about 45 in number, are members of an organization called the "New York Electrical Contractors Association, Inc.," which acts for its members collectively in their relations with Local 3 and in that capacity enters into contracts and agreements with said Local, in behalf of such members, and said Association is utilized and operated concertedly by said members to act for them in that capacity.

126 Since the latter part of 1934, said members of the aforesaid Contractors Association, by reason of contracts entered into in their behalf by said Association, have been continuously, and now are, under contracts and agreements with Local 3, providing for the exclusive employment of members of Local 3 in connection with all electrical work, and further providing that in all their said contracts they will include all purchases of electrical materials and equipment to be used as set forth in paragraph 23 hereof.

25. Most of the electrical contractors of substantial size located in the Borough of Brooklyn, in the City of New York, are members of an organization called the "Master Electrical Contractors Association of Brooklyn," which acts for its members collectively in their relations with Local 3 and in that capacity enters into contracts and agreements with Local 3, in behalf of such members, and said Association is utilized and operated concertedly by said members to act for them in that capacity.

The members of said Contractors Association of Brooklyn acting through said association have been continuously for some time past, and now are, under contracts and agreements with Local 3 providing for the exclusive employment of members of Local 3 in connection with all electrical work, and further providing that in all their said contracts they will include all purchases of electrical materials and equipment to be used, as described in paragraph 23 hereof. 128

26. Most of the electrical contractors of substantial size located in the Borough of Queens, in the City of New York, are members of an organization called the "Long Island Master Electrical Contractors Association, Inc.," which acts for its members collectively in their relations with Local 3 and in that capacity enters into contracts and agreements with Local 3, in behalf of such members, and said Association is utilized and operated concertedly by said members to act for them in that capacity.

The members of said Contractors Association of Queens acting through said Association have been continuously and for some time past, and now are, under contracts and agreements with Local 3 providing for the exclusive employment of members of Local 3 in connection with all electrical work, and further providing that in all their said contracts they will include all purchases of electrical materials and equipment to be used, as described in paragraph 23 hereof. 129

27. Over 70% of all the electrical equipment sold for use in the Metropolitan Area, is, and at all times herein mentioned was, purchased by electrical contractors for installation by them in the performance of their respective contracts, and all but a small percentage of such purchases for use in the Metropolitan Area are, and at all times herein mentioned were, made by union contractors, who were and are forced to accept the aforesaid orders and directions of Local 3 as to the manufacturers from whom said purchases shall be made and thus to refrain from making such purchases from the manufacturing plaintiffs, or the members of the Manufacturing Association, or any of them.

131 28. Said union electrical contractors at all times herein mentioned have been and now are, forced, compelled and coerced by Local 3 to enter into contracts and agreements with Local 3, for the conduct of their business within the Metropolitan Area, and to accept the orders and directions of Local 3, restricting their choice as to the manufacturers from whom they will make their purchases of electrical equipment for the performance of their contracts, notwithstanding the fact that such restrictions are contrary to the interests of their customers and the public, and among the forces, and means which are and have been employed and applied by said local union No. 3 so to force, compel and coerce said electrical contractors, are the following:

132 a. In the Metropolitan Area, where there are thirty or more building crafts, it is impracticable to erect any new building, or structure of any substantial size, except through the exclusive employment of contractors operating on the closed union shop basis and the exclusive employment of union men in nearly all of said crafts, because, through a federation or working agreements between the unions of said numerous building crafts in the Metropolitan Area, strikes are threatened and called of all the union men working in said various

branches of the construction business on any building or structure where any non-union man is employed in any one of said numerous organized crafts, and sympathetic strikes are threatened and called against all other buildings or structures in the City of New York, or elsewhere, even though no grievance exists against them, where construction work is being carried on by some builder, or contractor, who does work on any one building in any one locality where one or more non-union men are employed. Because of these practices and working arrangements between Local 3 and said numerous building trade unions, and the federations which they have formed, no architect, owner or builder, dares to employ any contractor who is not conforming to the terms and demands of the union of his trade, and no contractor, including electrical contractors, with a substantial volume of business in the Metropolitan Area can resist the unreasonable demands of his union, because it is impracticable for him to carry on such business, except with the sanction and approval of said union.

b. Various departments of the City of New York, such as the Board of Education, the Department of Sanitation, Department of Hospitals and Board of Transportation, which have contracts to award amounting annually to millions of dollars, refuse to carry out their statutory duties to award contracts to the lowest bidder, if the lowest bidder is not in favor with Local 3, for fear that Local 3 and the associated building trade unions will declare strikes on all contracts carried on for said Department, including contracts for electrical work on structures where no grievance exists, if said Department does not unlawfully stifle public bidding and confine its letting of public contracts to electrical contractors approved by Local 3.

c. Members of Local 3 are forbidden to work and are subject to fines, suspension and expulsion, if they work, for any contractor which does not operate under agreement with Local 3, and if said contractor attempts to carry out electrical contracts by employing non-union men to do the work which the union men are forbidden to do, strikes of all building trades will be called on the building or structure to prevent him from so doing.

d. Buildings of all kinds, including retail establishments, hotels, apartment buildings and restaurants, are picketed and boycotted, if they employ any electrical
137 contractor other than a closed shop electrical contractor, or any electrician other than a member of Local 3 to perform electrical work in connection with said places of business, and open shop electrical contractors, and places where they do business, are picketed and all such picketing is often accompanied by violence, intimidation, misrepresentation and disorderly conduct.

Because of these conditions, hereinabove described, all electrical contractors whose businesses depend in part upon carrying out contracts of any substantial size in the Metropolitan Area, are by Local 3 dominated, controlled, and deprived of their freedom of choice in determining from
138 what manufacturers they shall purchase their electrical equipment, and Local 3, taking advantage of this condition which it has created, is, and for a long time past has been, preventing said contractors, who are the principal outlet for the sale of electrical equipment in the Metropolitan Area, from patronizing and dealing with the manufacturing plaintiffs and the said members of said Manufacturers Association, or any of them, in respect thereto.

29. All of the members of the aforesaid Electrical Contractors Associations of the Boroughs of Manhattan and Brooklyn and Long Island, and all of the electrical contractors working under agreements with Local 3, as set forth in paragraph numbered 23 herein, are also parties to another agreement with Local 3, providing for the adoption and observance of a so-called Code of Fair Competition, which requires that all bids for contracts in excess of $1,000 shall be filed with administrative agency of said Code, thereby affording ready ways and means for Local 3, and its representatives, to obtain information as to electrical contracts and bids, covering work in the Metropolitan Area, which source of information is utilized by said 140
Local, and its representatives, in connection with the enforcement of the boycott hereinafter described.

30. Within the Metropolitan Area, there are about fifteen manufacturers engaged in the production of some kind of electrical equipment and working under agreements with Local 3, which provide for the exclusive employment of members of said Local, in connection with all work which said Local claims to be electrical work. Said manufacturers have entered into said agreements with said union, upon the understanding that by the means herein set forth, and through the exercise of the power and control herein described, and through the use of the label or trade mark of Local 3 on all or most of the products of said manufacturers, said local union will protect them from the competi- 141
tion of all manufacturers of electrical equipment outside the State of New York, such as the manufacturing plaintiffs and the members of said Manufacturers Association. In furtherance of said agreements and understandings with said local union manufacturers to throttle competition for the benefit of said union manufacturers, and because of the acts performed in furtherance of the combination and conspiracy hereinafter set forth, said union manufacturers

have artificially increased and are constantly increasing their sales of electrical equipment for use in the Metropolitan Area, at prices higher than those charged by the manufacturing plaintiffs and members of said Manufacturers Association, and as beneficiaries of an unlawful boycott, have pirated and appropriated and are pirating and appropriating to themselves a large volume of business, which under conditions of a free market and free competition, would have been and would be enjoyed by the several manufacturing plaintiffs and the members of said Manufacturers Association.

143 31. The defendants above named, and the officers and members of Local 3, and other persons, to each of the plaintiffs unknown, have been for some years past and now are engaged in an unlawful combination and conspiracy contrary to the laws of the United States, enacted July 2, 1890, and entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and laws amendatory thereof and supplementary thereto, to prevent, stifle and restrain interstate trade and commerce in certain types of electrical equipment flowing from states other than the State of New York into the Metropolitan Area, by closing the market in said Area to electrical equipment manufactured and built outside the State of New York, or built outside of the State of New York by the employment of other than members of the International Brotherhood,
144 thus securing practically a monopoly of said market for electrical equipment made exclusively by members of said Local 3 within said Metropolitan Area. Said combination and conspiracy has been continuously in existence for many years, and starting with certain types of electrical equipment, such as panel boards and some other types of switchboards, has from time to time extended its scope, operation and restraint of trade to all of the types of electrical equipment mentioned in paragraph 16 hereof, and

lastly, including electrical wire and cable. Said combination and conspiracy, through the activities of Local 3 and those acting in its behalf, has from time to time been joined by other persons, firms and corporations until it has drawn into its ranks numerous electrical contractors and manufacturers within the Metropolitan Area, who, for some time past, have been and now are members of said combination and conspiracy. A part of the purpose, scheme and program of said combination and conspiracy has been and is to restrain and destroy the interstate trade and commerce of each of the manufacturing plaintiffs and members of the Manufacturers Association in electrical equipment between their respective places of business outside of 146
the State of New York as aforesaid, and the Metropolitan Area, and incidental thereto to restrain the trade and commerce of plaintiffs, Cutler-Hammer, Inc. and General Electric Company, in electrical equipment made in New York State and seeking a market in the Metropolitan Area, because said electrical equipment is not made solely by members of Local 3 within said Metropolitan Area, and because its sale in the said Area would conflict with the monopolistic purpose of the defendants to secure said market for electrical equipment bearing the union label of Local 3.

32. In furtherance of the combination and conspiracy described in the last preceding paragraph hereof, the defendants aforesaid, and those confederated with them, have agreed upon, done and threatened to do, and are doing and 147
threatening to do many acts, to injure the plaintiffs and the members of the Manufacturers Association and each of them among which are the following:

a. They have ordered, directed and required and order, direct and require journeymen electricians, members of defendant Local 3, not to connect, install, work upon, or handle within the aforesaid Metropolitan Area, electrical equipment manufactured and sold by

the manufacturing plaintiffs, and the members of the Manufacturers Association, or any of them, and not to work on any structure, or building, where said equipment is used, or is about to be used, and they have threatened and do threaten each member of said defendant Local 3 with punishment in the form of fines, expulsion or other disciplinary measures for violation of said orders, directions or requirements, and have from time to time executed and are executing such threats against said members who have violated said orders and directions.

b. Arrangements and agreements have been entered
149 into, as hereinabove set forth, and are being maintained between Local 3 and electrical contractors who are the principal purchasers of electrical equipment and materials for use in the Metropolitan Area, whereby said contractors are required to refrain from purchasing for use in the said Metropolitan Area, or installing or servicing in said Area, any electrical equipment, except such as is manufactured through the employment of members of Local 3 within said Metropolitan Area, or through the employment of members of the International Brotherhood, and Local 3 and those acting in its behalf have policed and enforced and are policing and enforcing said agreement and understanding by strikes and threats of strikes and picketing di-
150 rected against all purchasers and users of electrical equipment not built and manufactured by members of the International Brotherhood or the members of Local 3.

c. Agreements, arrangements and understandings have been entered into and are being maintained between Local 3 and manufacturers of electrical equipment located within the Metropolitan Area, whereby said manufacturers agree to employ members of Local

3 exclusively in all work over which said Local 3 claims jurisdiction, upon the understanding that by means of the boycott herein set forth, and through the exercise of the power and control herein described, and through the use of the label or trade mark of Local 3, said conspirators will force all purchasers of electrical equipment for use in the Metropolitan Area, to confine their purchases of electrical equipment largely to said local union manufacturers, and thus to boycott the manufacturing plaintiffs and the members of the Manufacturers Association, and each of them, in respect to the sale and distribution of such electrical equipment regardless of the level of prices for which equipment of 152
equal or better grade and quality is offered by the said plaintiffs and the members of said association.

d. They have from time to time, in various ways, declared and continue to declare to dealers, owners of buildings, builders, architects, engineers, general contractors and subcontractors that electrical equipment produced by the manufacturing plaintiffs and members of the Manufacturers Association, or any of them, will not be connected, installed, handled or worked upon by members of the defendant Local 3, and that members of Local 3 will not be permitted to work on any building, or structure, where said equipment is used, and that consequently such equipment cannot be used within said Metropolitan Area, and they have 153
thus prevented and do prevent dealers, architects, engineers, builders, owners, contractors, subcontractors and particularly electrical contractors, from specifying, agreeing to purchase, or purchasing such electrical equipment.

e. They have threatened and continue to threaten various departments of the City of New York with strikes of electricians employed by any electrical con-

tractor on any building under the jurisdiction of any City Departments in question, if said Department, after taking competitive bids, should award any electrical contract to a bidder who although the lowest bidder is not working under agreement with Local 3, and which does not award all electrical contracts for electrical work to electrical contractors operating under an agreement and understanding with Local 3 requiring the purchase of all equipment from manufacturers on the accepted list of said union, Local 3, and they have from time to time carried out such threats by calling such strikes.

155 f. Through strikes and labor disturbances and threats thereof, they have wilfully, knowingly and repeatedly induced and attempted to induce, and by the same means and methods now do induce architects, engineers, owners of buildings, builders, contractors, and subcontractors, under contract to purchase electrical equipment manufactured by one or more of the manufacturing plaintiffs, or the members of said Manufacturers Association, for use within said Metropolitan Area, to breach and repudiate said contracts, and have by various means sought to prevent, have prevented and now do prevent them from carrying out such contracts.

g. Special orders and regulations have been and are 156 being issued from time to time by the conspirators aforesaid to members of Local 3 that certain types of electrical equipment made by the manufacturing plaintiffs or the members of the Manufacturers Association, or any of them, may under certain circumstances be installed and used within the Metropolitan area, provided that after said equipment has been completely assembled and wired in the factory for the purpose of factory tests, it be disassembled and unwired by the manufac-

turer in such factory, and shipped into the Metropolitan area in said unfinished state, for remanufacture by a local union manufacturer employing members of Local 3 in said area, and in such cases, by the means and methods hereinabove described in this complaint; the sale of electrical equipment by the manufacturing plaintiffs and the members of the Manufacturers Association, or any of them, and the use thereof by others desiring to utilize the same, have been and are being prevented except upon compliance by said plaintiffs and members at great expense with the aforesaid unjust and oppressive conditions.

h. Having, through the means hereinabove set forth 158
and particularly through the coercion of the purchasers or possible purchasers of electrical equipment, obtained control of a large part of the market for electrical equipment to be used in the Metropolitan Area, they have ordered, directed and required, and continue to order, direct and require that no such electrical equipment made by the manufacturing plaintiffs or the members of the Manufacturers Association, or any of them, shall be purchased for use or used in said restricted Area, and have made and continue to make it publicly known that any owner, architect, engineer, contractor, building owner, Department of the City of New York, or any other possible purchaser, ignoring, or violating, any of the orders, or directions of said 159
conspirators, will suffer great loss and damage through acts of interference with the erection of the buildings, or the conduct of the businesses involved.

i. By reason of such boycotting activities, they have brought about and are maintaining a condition whereby dealers, building owners, builders, architects, engineers, contractors and subcontractors, including electrical contractors who, in the ordinary course of business de-

sire to, or are obliged to, purchase or use electrical equipment of the kind manufactured by the manufacturing plaintiffs and the members of the Manufacturers Association, and who, in the absence of said combination and conspiracy, would purchase the same from one or more of the manufacturing plaintiffs or one or more of the members of the Manufacturers Association, are coerced by the fear of strikes, labor troubles and boycotts to refrain from purchasing any electrical equipment manufactured by any of the said plaintiffs for use in the Metropolitan Area, and thus they have largely monopolized and continue to monopolize for local union manufacturers, and have closed and continue to close to the manufacturing plaintiffs and the members of the Manufacturers Association, a large part of the market for the sale in interstate commerce of electrical equipment to be used in the Metropolitan Area.

j. They have forced and continue to force the purchase of all such electrical equipment from a small group of local union manufacturers at prices artificially increased above those for which the manufacturing plaintiffs and the members of the Manufacturers Association, and each of them, were and are willing to sell said electrical equipment, and have thus injured and are injuring the public and have imposed and are imposing burdens on taxpayers, rent payers and workers of all kinds located in the restricted area.

33. As a result of the aforesaid combination and conspiracy and the acts done in furtherance thereof as hereinabove set forth, dealers, owners, builders, architects, engineers, contractors, subcontractors, and particularly electrical contractors within the Metropolitan Area aforesaid, have from time to time been deterred and prevented and are deterred and prevented from patronizing the manu-

facturing plaintiffs and the members of the Manufacturers Association and each of them, and from specifying, purchasing or using electrical equipment respectively manufactured by the said manufacturing plaintiffs and the members of said Manufacturers Association, and furthermore have, in many instances, been and now are being coerced into breaching contracts already made with one or more of the manufacturing plaintiffs or members of said association for the purchase of such equipment. Moreover, in many instances where members of the defendant Local 3 have within said Metropolitan Area been or are permitted to install and work upon electrical equipment made by some of the manufacturing plaintiffs or members of the Manu- 164
facturers Association, the respective manufacturing plaintiffs or members of the Manufacturers Association have been forced and are still being forced to incur greatly increased manufacturing costs because of the unjust and unlawful exactions and requirements of the defendants, thereby greatly diminishing the profits which said respective manufacturers would otherwise have derived or might derive from the sale of such equipment.

34. None of the members of the defendant Local Union No. 3 aforesaid, nor any of the other defendants above named, have been at any of the times hereinafter referred to, nor are they now, employees of the plaintiffs or the members of said Manufacturers Association in their respective factories, and this suit is not a suit between em- 165
ployers and employees arising out of differences between any of the plaintiffs and the defendants or any of the members of said Manufacturers Association and the defendants with respect to the terms or conditions of employment.

35. The character of the unlawful acts done and being done by the defendants pursuant to the combination and conspiracy hereinabove described, is such that the respec-

tive property rights of the plaintiffs, and of those members of the Manufacturers Association hereinabove referred to who are injured as aforesaid by such acts, to continue to engage in interstate commerce without molestation or interference, cannot be protected by the police or other public officers ordinarily charged with the duty of protecting property, and said plaintiffs and the aforesaid members of said Manufacturers Association will suffer great and irreparable damage unless the above described combination and conspiracy, and the acts done and being done by the defendants in furtherance thereof, be declared to be unlawful, and (inasmuch as said plaintiffs and the aforesaid
167 members of said association have no adequate remedy at law) an injunction in the form hereinafter prayed for be granted.

36. The plaintiffs and those members of the Manufacturers Association hereinabove referred to have complied with all valid obligations imposed upon them by the statutes of the United States with reference to the matters herein complained of, and have made all reasonable efforts to adjust the differences existing between them and the defendants hereinabove described and any further efforts at settlement would be futile and unavailing. With respect to any and all relief herein sought, the denial of such relief will inflict greater injury upon the plaintiffs and the members of the Manufacturers Association aforesaid than
168 will be inflicted upon the defendants by the granting thereof.

WHEREFORE, the plaintiffs demand judgment against the defendants as follows:

A. That, as provided in Section 274(d) of the Judicial Code, this Court declare the said conspiracy and all the acts done and being done in furtherance thereof as aforesaid, to be unlawful and contrary to the Act of Congress

of July 2, 1890 entitled an "Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known as The Sherman Anti-Trust Law, as amended and supplemented.

B. That as and for further relief pursuant to Section 274(d) of the Judicial Code aforesaid (there being no adequate remedy at law in the premises), the defendants, Local Union No. 3, International Brotherhood of Electrical Workers, Bert Kirkman, individually and as President thereof, William Beck, individually and as Treasurer thereof, Hugh Morgan, individually and as Assistant Business Manager thereof, George W. Whitford, individually and as Recording Secretary thereof, Jacob S. Solomon, individually and as Business Agent thereof, and John Duffy, individually and as an Agent thereof, and their and each of their agents, servants, attorneys and confederates and the members of said Local Union No. 3 and all persons acting in aid of or in conjunction with them, or any of them, be perpetually enjoined and restrained from in any manner combining and conspiring to obstruct, restrain or interfere with the interstate trade or commerce of the manufacturing plaintiffs and the members of National Electrical Manufacturers Association hereinabove referred to in any one or more of the kinds of electrical equipment manufactured by them or any of them, by 170

(a) Inducing or seeking or attempting to induce any person, firm or corporation to refrain from purchasing or from agreeing to purchase any electrical equipment, including electric switchboards, electric panel boards, distribution boards, power switches, safety switches, knife switches, enclosed switches, cutout boxes, small and large air circuit breakers, motor starters and controllers and other industrial control apparatus, lighting fixtures, lighting sockets, signaling devices, conduits and wire and cable for the transmission of elec- 171

trical current, or any of the same from any of said manufacturing plaintiffs or said members.

(b) Inducing or seeking or attempting to induce any person, firm or corporation to refrain from performing or carrying out any contract, agreement or understanding, whether oral or in writing, for the purchase from any of the manufacturing plaintiffs or from any of the members of National Electrical Manufacturers Association aforesaid of any electrical equipment, including that mentioned and described in subdivision (a) of the foregoing.

173 (c) In any manner whatsoever diverting or seeking or attempting to divert from any of the manufacturing plaintiffs or any of the members of said last named Association any business, contracts, or orders for or relating to the aforesaid electrical equipment produced by said manufacturing plaintiffs or said members, or any of them, upon the ground that the assembling and wiring of such equipment are wholly or partially performed in the respective factories of said manufacturing plaintiffs of said members by workmen who are not members of the International Brotherhood of Electrical Workers.

(d) In any manner or by or through any acts or means preventing the manufacturing plaintiffs and the 174 members of said Association from securing orders for or making sales of any of the electrical equipment manufactured by them or any of them as mentioned in subdivision (a) of the foregoing, upon the ground that such equipment is wholly or partially assembled and wired in the respective factories of said manufacturing plaintiffs and said members outside the Metropolitan Area aforesaid.

(e) Inducing, ordering or in any manner or by or through any means or methods requiring any owner,

builder, contractor, electrical contractor or other possible or potential purchaser of any of the electrical equipment mentioned in subdivision (a) aforesaid to execute or enter into or to observe, carry out or perform any contract, agreement or understanding which in substance or effect requires such owner, builder, contractor, electrical contractor or purchaser not to purchase such equipment from any of the manufacturing plaintiffs or any of said members.

(f) Inducing, ordering, directing or requiring any person or persons to refuse to handle, connect, install or work upon any of the electrical equipment mentioned in subdivision (a) of the foregoing, produced by the 176
manufacturing plaintiffs and the members of National Electrical Manufacturers Association aforesaid, or any of them, while said person or persons are permitted to handle, connect, install or work upon similar products made, wired, assembled or sold by any competing manufacturer or manufacturers within the Metropolitan Area aforesaid.

(g) Adopting, promulgating, maintaining or enforcing any rule or regulation forbidding the members of the defendant Local Union No. 3 or any of them to handle, connect, install, wire, assemble or work upon any of the electrical products mentioned in subdivision (a) hereinabove referred to, and produced by any of the manufacturing plaintiffs or any of the members of 177
National Electrical Manufacturers Association aforesaid, and from fining, expelling or otherwise disciplining any of said members from disobeying any such rule or regulation.

(h) From inducing, ordering, directing or requiring any person or persons not to handle or install the aforesaid electrical equipment unless after being completely

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wired and assembled by the manufacturing plaintiffs, or the aforesaid members of the Association, in their respective factories, said equipment is disassembled and partially unwired and shipped into said Metropolitan Area in said unfinished state.

C. That a temporary injunction of the same tenor and effect as the permanent injunction herein prayed for issue out of this Court to continue in full force and effect until and during the trial of this action.

D. That the plaintiffs, and each of them, recover their respective costs and disbursements in this action and have
179 such other and further relief as to this Court may seem just and proper.

GLEASON, MCLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs,
Office and P. O. Address,
40 Wall Street,
Borough of Manhattan,
City of New York.

WALTER GORDON MERRITT,
Counsel.

(Verified by WALTER GORDON MERRITT on April 2, 1937.)

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Answer to Amended Bill of Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The defendants, Local Union No. 3 of the International Brotherhood of Electrical Workers, Bert Kirkman, individually and as President thereof, William Beck, individually and as Treasurer thereof, Hugh Morgan, individually and as Assistant Manager thereof, George W. Whitford, individually and as Recording Secretary thereof, Jacob S. Solomon, individually and as Business Agent thereof, and 182
Gerald Duffy, individually and as an Agent thereof, for their answer to the amended bill of complaint, respectfully allege:

These defendants now and at all times hereafter saving and reserving unto themselves all and all manner of benefits and advantages of exception which may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the plaintiffs' amended complaint contained, for answer thereunto or unto so much or such part thereof as these defendants are advised that it is material and necessary for them to make answer thereto, answering say:

FIRST: Deny knowledge or information sufficient to form a belief as to each and every allegation contained in para- 183
graph designated and numbered "1" of the amended complaint, except the defendants deny the allegation contained therein that the membership of the "National Electrical Manufacturers Association is engaged in the business of manufacturing and selling of electrical equipment in interstate commerce."

SECOND: Deny knowledge or information sufficient to form a belief that the "plaintiff, Allen Bradley Co., is, and

at all times herein mentioned was, a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business in the City of Milwaukee and State of Wisconsin," as alleged in paragraph designated and numbered "2" of the amended complaint.

Deny the allegation that "where at all times herein mentioned it was, and now is, engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment," as alleged in paragraph designated and numbered "2" of the amended complaint.

185 THIRD: Deny knowledge or information sufficient to form a belief that the "plaintiff, Allis-Chalmers Manufacturing Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the City of Milwaukee, and State of Wisconsin," as alleged in paragraph designated and numbered "3" of the amended complaint.

Deny the allegation that "where at all times herein mentioned it was, and now is, engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment," as alleged in paragraph designated and numbered "3" of the amended
186 complaint.

FOURTH: Deny upon information and belief that the plaintiff "The Clark Controller Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cleveland, and State of Ohio, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling industrial

control apparatus, meaning thereby devices for the application, direction and control of electrical current," as alleged in paragraph designated and numbered "4" of the amended complaint.

Deny the allegation that "all of its said products were at the times herein mentioned, and now are, manufactured in the State of Ohio, and all of its sales and shipments thereof for use in the City of New York and vicinity were at the times herein mentioned, and now are, made in interstate commerce," as alleged in paragraph designated and numbered "4" of the amended complaint.

FIFTH: Deny upon information and belief that the plaintiff "Colt's Patent Fire Arms Manufacturing Co., is, and 188
at all times herein mentioned was, a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in the City of Hartford, and State of Connecticut, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling electrical equipment such as 'knife switches' and 'enclosed switches,' which are devices and apparatus used in connection with the application and distribution of electrical current," as alleged in paragraph designated and numbered "5" of the amended complaint.

Deny the allegation that "all of its said products were at the times herein mentioned, and now are, manufactured in the State of Connecticut, and all of its sales and shipments thereof for use in the City of New York and vicinity were 189
at the times herein mentioned, and now are, made in interstate commerce," as alleged in paragraph designated and numbered "5" of the amended complaint.

SIXTH: Deny upon information and belief that the plaintiff "Cutler-Hammer, Inc., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Delaware, with its principal place

of business in the City of Milwaukee, and State of Wisconsin, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling electrical equipment, such as knife switches, enclosed switches and industrial control apparatus," as alleged in paragraph designated and numbered "6" of the amended complaint.

Deny the allegation that "all of the products manufactured by said plaintiff at its factory at Milwaukee, Wisconsin, and sold by it for use in the City of New York and vicinity were at all times herein mentioned, and now are, sold and shipped in interstate commerce," as alleged in paragraph designated and numbered "6" of the amended complaint.

Deny upon information and belief that "in addition to its factory in Milwaukee, said plaintiff maintains, and at all times herein mentioned did maintain, a factory in the City of New York, where it manufactures, and at all times herein mentioned did manufacture, knife switches and safety switches," as alleged in paragraph designated and numbered "6" of the amended complaint.

SEVENTH: Deny upon information and belief that the plaintiff "The Electric Controller and Mfg. Co. is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cleveland, and State of Ohio, where at all times herein mentioned it was, and now is, engaged in manufacturing and selling knife switches, enclosed switches and industrial control apparatus," as alleged in paragraph designated and numbered "7" of the amended complaint.

Deny the allegation that "all of its said products were at the times herein mentioned, and now are, manufactured in the State of Ohio, and all of its sales and shipments thereof for use in the City of New York and vicinity were at the times herein mentioned, and now are, made in inter-

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state commerce," as alleged in paragraph designated and numbered "7" of the amended complaint.

EIGHTH: Deny upon information and belief that the plaintiff "General Electric Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of New York and engaged in the business of manufacturing and selling electrical equipment and appliances of many kinds"; that "said plaintiff at all times herein mentioned maintained and operated, and now maintains and operates, a number of factories for the manufacture of its products, including the following: a factory in the City of Philadelphia, and State of Pennsylvania, for the manufacture of panel boards, distribution boards, power switches, knife switches, enclosed switches and large and small air circuit breakers; a factory in the City of Lynn, in the State of Massachusetts, for the manufacture of electrical signaling apparatus; a factory in the City of Schenectady, in the State of New York, for the manufacture of industrial control apparatus and electrical wire and cable and other products; a factory in the City of Bridgeport, in the State of Connecticut, for the manufacture of electrical wire and cable and sockets for electrical fixtures, and a factory in the City of New Kensington, in the State of Pennsylvania, for the manufacture of rigid steel conduit for electrical purposes," as alleged in paragraph designated and numbered "8" of the amended complaint.

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Deny the allegation that "all of said electrical equipment produced and sold by said plaintiff for use in the City of New York and vicinity, with the exception of the industrial control apparatus and wire and cable produced at its factory in the City of Schenectady aforesaid, has at all times herein mentioned been, and now is manufactured outside of the State of New York, and sold and shipped in interstate commerce," as alleged in paragraph designated and numbered "8" of the amended complaint.

196 NINTH: Deny upon information and belief that "the plaintiff, Hardwick-Hindle, Inc., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in the City of Newark, and State of New Jersey," as alleged in paragraph designated and numbered "9" of the amended complaint.

Deny the allegation "where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of
197 the types of electrical equipment," as alleged in paragraph designated and numbered "9" of the amended complaint.

TENTH: Deny upon information and belief that "the plaintiff, Monitor Controller Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Maryland with its principal place of business in the City of Baltimore, and State of Maryland," as alleged in paragraph designated and numbered "10" of the amended complaint.

Deny the allegation "where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment," as alleged in paragraph
198 designated and numbered "10" of the amended complaint.

ELEVENTH: Deny upon information and belief that "the plaintiff, Palmer Electric & Mfg. Co., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal place of business in the City of Waltham, and State of Massachusetts," as alleged in paragraph designated and numbered "11" of the amended complaint.

Deny the allegation "where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment," as alleged in paragraph designated and numbered "11" of the amended complaint.

TWELFTH: Deny upon information and belief that "the plaintiff, The Rowan-Controller Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Maryland, with its principal place of business in the City of Baltimore, and State of Maryland," as alleged in paragraph designated and numbered "12" of the amended complaint. 200

Deny the allegation "where at all times herein mentioned it was, and now is, engaged in manufacturing outside the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more of the types of electrical equipment," as alleged in paragraph designated and numbered "12" of the amended complaint.

THIRTEENTH: Deny upon information and belief that the "plaintiff, Square D Company is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Michigan, with its principal place of business in the City of Detroit, and State of Michigan"; that "said plaintiff at all times herein mentioned maintained, and now maintains, a factory in said City of 201 Detroit for the manufacture and sale of panel boards, distribution boards, knife switches, enclosed switches and small air circuit breakers, and further maintained, and now maintains, a factory in the City of Milwaukee, and State of Wisconsin, for the manufacture and sale of electrical industrial control apparatus," as alleged in paragraph designated and numbered "13" of the amended complaint.

Deny the allegation that "all of the aforesaid products of the plaintiff were at the times herein mentioned, and

now are, manufactured outside of the State of New York, and all of its sales and shipments thereof for use in New York City and vicinity were at the times herein mentioned, and now are, made in interstate commerce," as alleged in paragraph designated and numbered "13" of the amended complaint.

FOURTEENTH: Deny upon information and belief that the "plaintiff, Trumbull Electric Manufacturing Co., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in the City of Plainville, and State of Connecticut, where at all times herein
203 mentioned it was, and now is, engaged in manufacturing and selling panel boards, distribution boards, knife switches, enclosed switches and industrial control apparatus," as alleged in paragraph designated and numbered "14" of the amended complaint.

Deny the allegation that "all of its said products were at the times herein mentioned, and now are, manufactured in the State of Connecticut, and all of its sales and shipments thereof for use in the City of New York and vicinity were at the times herein mentioned, and now are, made in interstate commerce," as alleged in paragraph designated and numbered "14" of the amended complaint.

FIFTEENTH: Deny upon information and belief that the
204 "plaintiff, Westinghouse Electric and Manufacturing Company, is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices in the City of Pittsburgh, and State of Pennsylvania:" that "said plaintiff is, and at all times herein mentioned was, engaged in the business of manufacturing and selling electrical equipment and appliances of many kinds, including electric switchboards, electric panel boards, distribution boards, safety

switches, cutout boxes, industrial control apparatus, lighting sockets and wire and cables," as alleged in paragraph designated and numbered "15" of the amended complaint.

Deny the allegation that "all of its said products were at the times herein mentioned, and now are, manufactured outside of the State of New York, its principal plants being located in and about the City of Pittsburgh, aforesaid, and all of its sales and shipments thereof for use in the City of New York and vicinity have at all times herein mentioned been, and now are, made in interstate commerce," as alleged in paragraph designated and numbered "15" of the amended complaint.

SIXTEENTH: Deny upon information and belief each and every allegation contained in paragraph designated and numbered "16" of the amended complaint.

SEVENTEENTH: Admit each and every allegation contained in paragraphs designated and numbered "17," "18," "19" and "22" of the amended complaint.

EIGHTEENTH: Deny upon information and belief the allegations contained in paragraph designated and numbered "20" of the amended complaint, which allege "a controversy exists between the plaintiffs and the defendants, the issues wherein involve the interpretation, application and enforcement of the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies' together with acts amendatory thereof and supplementary thereto," and, therefore, further deny, upon information and belief, that this Court has any jurisdiction.

By reason of the aforesaid denial, the defendants deny that the plaintiffs are legally entitled to seek a declaration of their rights, pursuant to Section 274(d) of the Judicial Code, or any further relief in the form of an injunction.

NINETEENTH: Deny each and every allegation contained in paragraph designated and numbered "21" of the amended complaint.

TWENTIETH: Deny the allegations contained in paragraph designated and numbered "23" of the amended complaint, which allege that "these provisions requiring the purchase of materials and equipment by the electrical contractor exclusively are, and have been, inserted in all said contracts at the instance of Local 3, in order thereby to exclude the possibility of the selection and purchase of such materials or equipment by any engineer, architect, owner, builder, or general contractor, and in order to make it practicable for Local 3, by reason of its domination over electrical contractors within the Metropolitan Area, to dictate, name and control the manufacturers from whom electrical equipment may be purchased, and to boycott and prevent the purchase of any type of electrical equipment produced by the manufacturing plaintiffs and the members of the Manufacturers Association, or any of them as hereinafter set forth."

Deny the allegations contained in paragraph designated and numbered "23" of the amended complaint, which allege that "all of said contractors entering into contracts with Local 3 and accepting said clause in reference to the purchase of electrical equipment and materials as aforesaid, did so well knowing that the purpose of Local 3, in demanding said clause, was to require said contractors to boycott electrical equipment not made by manufacturers through the employment of members of Local 3 within the Metropolitan Area, or not made by manufacturers through the exclusive employment for electrical work of members of the International Brotherhood, and said contractors thereby agreed among themselves and with Local 3 to boycott any person, firm or corporation which would not give them a contract for electrical equipment as well as for the installa-

tion thereof and thus to assist in boycotting and narrowing the market for electrical equipment not made by manufacturers through the employment of members of Local 3 within the restricted Metropolitan Area or not made through said exclusive employment of members of the International Brotherhood."

Deny the allegations contained in paragraph designated and numbered "23" of the amended complaint, which allege that "said contractors accepted and continue to accept said clause for the reasons herein set forth and because they profited through forcing all purchases of electrical equipment to be made through them."

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TWENTY-FIRST: Admit each and every allegation contained in paragraph designated and numbered "24" of the amended complaint, except the defendants deny the allegation contained therein which alleges "that in all their said contracts they will include all purchases of electrical materials and equipment to be used as set forth in paragraph 23 hereof."

TWENTY-SECOND: Admit each and every allegation contained in paragraph designated and numbered "25" of the amended complaint, except the defendants deny the allegation contained therein which alleges "that in all their said contracts they will include all purchases of electrical materials and equipment to be used, as described in paragraph 23 hereof."

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TWENTY-THIRD: Admit each and every allegation contained in paragraph designated and numbered "26" of the amended complaint, except the defendants deny the allegation contained therein which alleges "that in all their said contracts they will include all purchases of electrical materials and equipment to be used, as described in paragraph 23 hereof."

TWENTY-FOURTH: Deny each and every allegation contained in paragraphs designated and numbered "27", "28", "29", "31", "32", "33", "34", "35" and "36" of the amended complaint.

TWENTY-FIFTH: Deny each and every allegation contained in paragraph designated and numbered "30" of the amended complaint, except that the defendants allege and admit that within the Metropolitan Area there are numerous manufacturers engaged in the production of electrical equipment working under agreements with Local 3 which provide for the exclusive employment of members of the
215 said local in connection with all work which said local claims to be electrical work.

FOR A FIRST, SEPARATE AND DISTINCT DEFENSE,

to the amended bill of complaint, the defendants allege:

TWENTY-SIXTH: That the plaintiffs have an adequate remedy at law.

FOR A SECOND, SEPARATE AND DISTINCT DEFENSE,

to the amended bill of complaint, the defendants allege:

TWENTY-SEVENTH: That this Court has no jurisdiction over the subject matter set forth in the amended bill of
216 complaint.

FOR A THIRD, SEPARATE AND DISTINCT DEFENSE,

the defendants allege:

TWENTY-EIGHTH: That at all times herein mentioned, International Brotherhood of Electrical Workers was and still is an unincorporated association and organization, with jurisdiction over all electrical wage workers in the United States and its possessions, the Dominion of Canada

and Newfoundland, consisting of an unlimited number of Local Unions acknowledging its jurisdiction and subject to its laws and usages, and having as one of its chief objects the organization of all electrical workers into Local Unions.

TWENTY-NINTH: That at all the times herein mentioned, the defendant, Local Union No. 3, International Brotherhood of Electrical Workers, is an unincorporated association and organization, consisting of approximately 6500 members, which was and still is a duly chartered Local Union of said International Brotherhood of Electrical Workers, and is subject to the Constitution, laws and usages 218
of the International Brotherhood of Electrical Workers.

THIRTIETH: That under the jurisdiction claimed by the International Brotherhood of Electrical Workers for each of its members, including each and every member of the defendant, Local Union No. 3, International Brotherhood of Electrical Workers, is the manufacturing, assembling, testing, inspecting, rebuilding, and repairing of all electrical machines, switchboards, panel boards, control boards, electrical devices, and all electrical apparatus in manufacturing and repair shops.

THIRTY-FIRST: That, upon information and belief, each and every one of the plaintiffs above named, and each and every member of the National Electrical Manufacturers 219
Association, at all the times herein mentioned has been and still is engaged in the business of manufacturing electrical equipment, over which both the International Brotherhood of Electrical Workers, as well as Local Union No. 3, International Brotherhood of Electrical Workers claimed and claim jurisdiction for their members.

THIRTY-SECOND: That the International Brotherhood of Electrical Workers, and the defendants, have attempted

and are attempting to organize and to secure for its members employment with each of the plaintiffs above named, and with each and every member of the National Electrical Manufacturers Association, and to create wages and working conditions for its members in the manufacturing of electrical equipment in the plants of the plaintiffs, and with each and every member of the National Electrical Manufacturers Association.

THIRTY-THIRD: That the International Brotherhood of Electrical Workers, as well as the defendant Local Union No. 3, International Brotherhood of Electrical Workers, through their representatives, for the purpose of securing
221 employment and creating wages and working conditions for its members as aforementioned, attempted to negotiate and did negotiate with the representatives of the plaintiffs for the employment of its members, but that the said representatives of the plaintiffs have refused and still refuse to enter into an agreement to employ the members of the International Brotherhood of Electrical Workers, as well as the members of the defendant, Local Union No. 3, International Brotherhood of Electrical Workers, and grant the said members working conditions and wages.

THIRTY-FOURTH: That by reason of the aforesaid, this action is a controversy between Employers and Employees arising out of differences between them, with respect to
222 terms or conditions of employment, the issues wherein involve the application of the Norris-LaGuardia Act (Title 29, Sections 101-15 Pocket Part, U. S. C. A.).

THIRTY-FIFTH: That within the contemplation of the said Norris-LaGuardia Act (Title 29, Sections 101-15 Pocket Part, U. S. C. A.) and the application and the interpretation placed thereon by the Court since its adoption by the Congress of the United States, the plaintiffs are not legally entitled to any injunction.

WHEREFORE, the defendants, and each of them, demand judgment, dismissing the amended complaint, with costs.

FRANK P. WALSH
and
HAROLD STERN,
Attorneys for Defendants,
Office and Post Office Address,
No. 70 Pine Street,
Borough of Manhattan,
City of New York.

(Verified May 6, 1937.)

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Stipulation For Appointment of Special Master.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

WHEREAS, the parties hereto are desirous that the above entitled action be referred to a special master to hear and determine all issues of law and fact herein and consider that the case is appropriate for such reference, and

WHEREAS, the parties hereto have agreed that this Court 225
be petitioned to appoint John Kirkland Clark, Esq., of No. 72 Wall Street, New York, N. Y., as such special master herein, now

IT IS HEREBY STIPULATED AND AGREED, SUBJECT TO THE APPROVAL OF THE COURT, AS FOLLOWS:

1. That this case be referred to John Kirkland Clark, Esq., of No. 72 Wall Street, New York, N. Y., as special master, to hear and determine all issues of law and fact

226 *Stipulation Appointing Special Master.*

herein, pursuant to the Equity Rules as promulgated by the Supreme Court of the United States.

2. That the reasonable fees of the said special master and the other necessary expenses of the reference be taxable in accordance with the ultimate result of the suit.

3. That either party hereto may, without notice to the other, submit to this Court an order, of which the annexed is a copy, for entry pursuant to the terms of this stipulation.

Dated, New York, N. Y., July 1st, 1937.

227 GLEASON, MCLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs.

FRANK P. WALSH & HAROLD STERN,
Attorneys for Defendants.

Order Appointing Special Master.

At a Stated Term of the United States District Court held in and for the Southern District of New York, at the Courthouse thereof, Foley Square, Borough of Manhattan, City of New York, on the 1st day of July, 1937.

228 Present: HON. VINCENT L. LEIBELL, *District Judge.*

ORDER OF REFERENCE IN EQUITY.

No. E-81-400.

[SAME TITLE.]

The parties hereto being desirous that the above entitled case be referred to John Kirkland Clark, Esq., to hear and

determine all issues of law and fact herein, and it appearing to the Court that this case is appropriate for such reference, on the annexed stipulation it is now by the Court

ORDERED, that the above entitled case be and it hereby is referred to John Kirkland Clark, Esq., of No. 72 Wall Street, New York, N. Y. as special master to hear and determine all issues of law and fact therein and report thereon to this Court with all convenient speed, and it is further

ORDERED, that the reasonable fees of the master and the other necessary expenses of the reference be taxable in accordance with the ultimate result of the suit. 230

VINCENT L. LEIBELL,
U. S. D. J.

Entry of the foregoing order is hereby consented to and notice of settlement thereof waived.

GLEASON, MCLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs.

FRANK P. WALSH & HAROLD STERN,
Attorneys for Defendants.

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Order of Discontinuance as to Certain Plaintiffs.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Plaintiffs, National Electrical Manufacturers Association, Hardwick-Hindle, Inc., Palmer Electric & Mfg. Co. and Rowan Controller Company, having moved at the close of the plaintiffs' case for leave to discontinue the above entitled action as to them, and each of them, it is

233 On motion of Gleason, McLanahan, Merritt & Ingraham, attorneys for the plaintiffs herein,

ORDERED that the said motion be and the same hereby is granted, and that the within action be and the same hereby is discontinued by the plaintiffs National Electrical Manufacturers Association, Hardwick-Hindle, Inc., Palmer Electric & Mfg. Co. and Rowan Controller Company, and each of them, without costs, and that said National Electrical Manufacturers Association, Hardwick-Hindle, Inc., Palmer Electric & Mfg. Co. and Rowan Controller Company, and each of them, be and they hereby are dropped as parties plaintiff in this action; and it is further,

234 ORDERED that this said action be and the same hereby is continued by Allen Bradley Co., Allis-Chalmers Manufacturing Company, Clark Controller Company, Colt's Patent Fire Arms Mfg. Co., Cutler-Hammer, Inc., The Electric Controller & Mfg. Co., General Electric Company, Monitor Controller Company, Square D Co., Trumbull Electric Manufacturing Co. and Westinghouse Electric & Manufacturing Company, and each of them, as plaintiffs against the above named defendants; and Gerald Duffy, one of the

defendants herein having been erroneously sued herein as "John" Duffy, it is

ORDERED, that the name of such defendant, where the same appears in all pleadings and proceedings heretofore had herein as "John" Duffy, be and the same hereby is changed to read Gerald Duffy, and it is further

ORDERED, that the within action shall continue under the title Allen Bradley Co., Allis-Chalmers Manufacturing Company, Clark Controller Company, Colt's Patent Fire Arms Mfg. Co., Cutler-Hammer, Inc., The Electric Controller & Mfg. Co., General Electric Company, Monitor Controller Company, Square D Co., Trumbull Electric Manufacturing Co. and Westinghouse Electric & Manufacturing Company, plaintiffs, *against* Local Union No. 3, International Brotherhood of Electrical Workers, Bert Kirkman, individually and as president thereof, William Beck, individually and as Treasurer thereof, Hugh Morgan, individually and as assistant business manager thereof, and George W. Whitford individually and as recording secretary thereof, Jacob S. Solomon individually and as business agent thereof, and Gerald Duffy individually and as an agent thereof, defendants. 236

Dated March 10, 1939.

VINCENT L. LEIBELL, 237
U. S. D. J.

The foregoing order is consented to

FRANK P. WALSH & HAROLD STERN,
Attorneys for Defendants.

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Opinion of the Special Master.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

ALLEN BRADLEY COMPANY ALLIS-CHALMERS MANUFACTURING COMPANY, CLARK CONTROLLER COMPANY, COLT'S PATENT FIRE ARMS MANUFACTURING COMPANY, CUTLER-HAMMER, INC., THE ELECTRIC CONTROLLER & MANUFACTURING COMPANY, GENERAL ELECTRIC COMPANY, MONITOR CONTROLLER COMPANY, SQUARE D COMPANY, TRUMBULL ELECTRIC MANUFACTURING COMPANY and WESTINGHOUSE ELECTRIC &
239 MANUFACTURING COMPANY,

Plaintiffs,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BERT KIRKMAN, individually and as President thereof, WILLIAM BECK, individually and as Treasurer thereof, HUGH MORGAN, individually and as Assistant Business Manager thereof, GEORGE W. WHITFORD, individually and as Recording Secretary thereof, JACOB S. SOLOMON, individually and as Business Agent thereof, and GERALD DUFFY, individually and as an Agent thereof,

Defendants.

240 The difficult problems presented by this case are whether the actions of the defendant local union and its officers constitute a violation of the provisions of the Sherman Anti-Trust Law which forbids combinations in restraint of interstate trade, and, if so, whether the plaintiffs are entitled to injunctive relief.

The defendant union, by the exercise of its economic force, has unionized the entire industry of large-scale installation of electrical equipment in New York City and

has likewise unionized the factories in New York City which produce certain types of electrical equipment essential in the building construction of today. The electrical contractors who employ members of the union are united in associations. The manufacturers are members of an association. The union has brought about a joint arrangement through the cooperation, voluntary or enforced, of the contractor groups and the manufacturing group with the union, whereby certain types of electrical equipment made by the local manufacturers are the only articles of that type permitted to be installed in electrical construction work in New York City. The natural and necessary effect has been to restrict the market, raise the cost to contrac- 242
tors, builders, and ultimately the community, and to create a barrier which excludes from installation in New York City similar products made by the plaintiffs, which were formerly widely sold in New York City through interstate commerce, for use in building construction here.

The plaintiffs are eleven corporations engaged in the manufacture of electrical goods and appliances—Allen Bradley Company, Allis-Chalmers Manufacturing Company, Clark Controller Company, Colt's Patent Fire Arms Mfg. Co., Cutler-Hammer, Inc., The Electric Controller & Mfg. Co., General Electric Company, Monitor Controller Company, Square D Company, Trumbull Electric Manufacturing Co., and Westinghouse Electric & Manufacturing Company. They maintain plants throughout the United 243
States and their manufactured goods are widely distributed in the course of interstate commerce. They employ tens of thousands of workers, who are represented by various unions, as bargaining agents,—in many cases as a result of elections or other steps pursuant to the provisions of the National Labor Relations Act.

Each of the plaintiffs is engaged in manufacturing various types of electrical equipment and materials, such as electrical switch-boards, panel-boards, distribution-boards,

power switches, safety switches, knife switches, enclosed switches, cut-out boxes, air circuit-breakers, motor starters and controls, and other industrial control apparatus, lighting fixtures, lighting sockets, signalling devices, conduits, and wire and cable for the transmission of electrical current.

The business which the plaintiffs claim has been blocked by the activities of the union and its affiliates amounted to millions of dollars.

The defendants are Local Union No. 3 of the International Brotherhood of Electrical Workers, an organization affiliated with the American Federation of Labor, and cer-
245 tain of the Local's officers and agents.

The union membership, at the conclusion of the hearings, included 16,000 or 17,000 workers, journeymen engaged in electrical trades and employees of manufacturers making materials used in connection with electrical installation.

The defendant union, while a unit of an organization affiliated with the American Federation of Labor and originally consisting solely of journeymen electricians engaged in installation work, has branched out, in recent years, into broader fields, so that approximately (if not more than) half of its membership is composed of workers other than electricians—an organizational union along lines similar to those of the Congress of Industrial Organization.

The plaintiffs sue to obtain a judgment declaring that
246 the defendants, in conjunction with electrical contractors and manufacturers of electrical goods and appliances in New York City, have committed acts violative of the Sherman Anti-Trust Law (Act of July 2, 1890, 26 Stat. 209, 15 U. S. C., Sec. 1); that, under the provisions of the Clayton Act (Act of October 15, 1914, 38 Stat. 737, 15 U. S. C., Sec. 26), an injunction should issue restraining the union in conjunction with the other alleged co-conspirators from barring certain products of the plaintiffs from entering

into the installation of electrical equipment in New York, through interstate commerce.

The defendants deny that any action on their part constituted an interference with interstate commerce; they maintain that all of the activities in which they engaged were legitimate labor activities dictated by their self-interest and falling into the sphere designated in the latest opinion on the subject handed down by the Supreme Court as "licit and not illicit"; and that, in any event, this court is without jurisdiction by reason of the provisions of the Norris-LaGuardia Act (Act of March 23, 1932, 47 Stat. 70; 29 U. S. C. 101-115) depriving the courts of the United States of any power to issue injunctions in cases where a 248
labor dispute exists in such a situation as is presented in the case at bar.

The action was begun December 9, 1935. Issue was originally joined by an answer on February 6, 1936. An amended complaint was served on April 2, 1937, and issue was finally joined by an answer to the amended complaint on May 7, 1937.

Meanwhile, an action for treble damages was brought by eight of these plaintiffs (omitting *Allen Bradley Company*, *Allis-Chalmers Manufacturing Company*, and *Monitor Controller Company*), with whom two additional parties joined, the *Okonite Company* and John J. Whitman, doing business as the *Reading Chandelier Works*. In the treble damage suit, all of the present defendants are parties, and, in addition, there are joined as individual defendants, Harry Van 249
Arsdale, Jr., John J. Sullivan, and William A. Hogan. The issue was joined in this case at some time prior to March 12, 1937, on which date the damage suit appeared on the Calendar of the United States District Court, and, by stipulation, it was marked off.

In the summer of 1937, the parties decided that the trial in the case at bar, instead of being conducted by a Judge of the United States District Court, should, for the con-

venience of the parties and counsel and the most efficient handling of the tremendous bulk of material, be referred to a Special Master to hear and determine the issues in the case. Thereafter, and on July 1, 1937, the parties entered into a stipulation reciting that they "are desirous that the above-entitled action be referred to a Special Master to hear and determine all issues of law and fact herein", and the order of reference bearing the same date, directed that the Special Master "hear and determine all issues of law and fact therein". It was then anticipated that six or eight months of hearings three days a week would suffice, and that the matter could be disposed of within a year.
251 Instead, hearings which began in October, 1937 were not concluded until March 7, 1940. Thirty-one volumes of typewritten testimony and argument were taken in over 200 hearings, covering over 25,000 pages. More than 1700 exhibits were submitted and over 400 witnesses called. To elucidate the issues, counsel have presented over three thousand pages of printed briefs.

When it is considered that the testimony involved sharp issues of fact covering hundreds of different incidents and scores of different jobs, the task of reaching a conclusion as to which of such issues are sufficiently material to warrant comment in a decision is, in itself, a tremendous task. Therefore, for the most part, only the general progress of developments involved in the creation of the situation which
252 constitutes the basis for the case at bar will be taken up, with occasional illustrations as to incidents throwing light upon that development.

This being an equitable proceeding and many of the events deemed material having occurred after the beginning of the proceeding, the issues grew constantly more complicated and involved. Meanwhile, also, both before and after the conclusion of the testimony, rulings of the courts on important problems involved in the case at bar for the first time reached the final authority, the United States Supreme Court.

After the conclusion of the testimony and the submission of the original briefs, counsel argued the case orally for four days. Since the oral argument, the Supreme Court has handed down several important decisions bearing upon the issues involved, each of which counsel has felt strongly supported their side of the case, and additional briefs have been filed to clarify such claims.

The Court had the benefit of the assistance of counsel on both sides of the case, who were outstanding leaders of the bar, particularly in the complicated and involved problems arising from the relationship between capital, management and labor, interstate commerce and the "interlacing statutes" known as the Sherman Anti-Trust Law, the 254
Clayton Act and the Norris-LaGuardia Act. Frank P. Walsh, chief counsel for the defendants, died during the course of the proceeding, but his associate proceeded to the conclusion of the case with unimpaired skill, ability and vigor, despite the heavy burden thus thrown upon him. The case was prepared with remarkable care and thoroughness on both sides. The issues of fact and the questions of law have been ably and exhaustively presented to the Court. As additional decisions of the Courts have been handed down since the conclusion of the case, further study of their effect and forceful arguments based upon them, both written and oral, have been furnished the Court in a mutual effort to reach a sound and just conclusion to one of the most difficult problems ever presented to a Court.

The essential facts are established with reasonable cer- 255
tainty by a clear preponderance of the credible evidence. The membership of the defendant local union, which rose from 4,500 in 1925 to almost 7,200 in 1931, dropped, during the years succeeding the economic crisis of 1929, until it numbered less than 5,500 in 1936. In 1934, it elected as its business manager, Harry Van Arsdale, Jr. While the union has executive officers—president, recording secretary, financial secretary and treasurer, and executive coun-

cil—the real management of the union's labor affairs rests almost absolutely in the power of the business manager and those whom he appoints as business agents. They constitute a contractors' committee, which determines which of the electrical contractors in the city shall be permitted to have contracts with the union. The evidence is overwhelming that no electrical contractor can do important electrical construction work in New York City without a contract with the union.

The business manager, through his contractors' committee, not only determines what contractors shall be granted contracts with the union, but he likewise, under the form
257 of contract in force for years, has, and habitually uses, the power to determine what members of the union shall be employed by a contractor who needs an electrical worker. He designates who shall be foremen and shop stewards, at higher rates of pay.

Year after year, as contracts came up for renewal, Van Arsdale, as business manager of the union, fought for and gradually obtained a reduction of the number of hours which a union member could work during any week or any day at the specified rate of compensation. Year by year, also, the rate of compensation per hour during the specified hours per day and per week was increased. There is no evidence in the record to indicate that the increased wage per hour resulted in any increased amount of work or any
258 improved quality in the work. It is also clear from the record that, while, under the latest requirements, only six hours of work per day can be called for at the regular rate, and only five days of work a week, there is no real objection to overtime work—as long as the hours of overtime are paid at double the ordinary rate of $2.00 per hour. There is no evidence in the record to indicate whether the annual earnings of the journeymen in the union have increased over the amount earned when more hours or days of work at lower rates were specified.

The defendant union is one of the constituent members of the New York Building Trades Council. This Council includes about 120 local unions engaged in building construction work, with a membership of some 200,000 workers. Van Arsdale is vice president of the organization. The understanding between the unions is that if any one of them declares the contractor on a particular construction job to be unfair, the union suffering from such unfairness may call all members of the affiliated unions engaged in the construction work to go out on strike. That this power constitutes no mere idle threat was amply demonstrated when Local No. 3 engaged in a strike on new subway work, and, through the cooperation of other trades 260
unions, succeeded in halting the entire construction work on the new subway for over two months.

The union has entered into contracts not only with individual contractors, but with associations of contractors in the several boroughs. Practically all of the contractors handling large volumes of work are members of these contractors associations. During the past five years, every one of the contractors associations had acquired an executive secretary who was formerly a union office-holder.

In 1934, there were half a dozen local manufacturers engaged in the manufacture of electrical switch-boards and similar electrical equipment, doing business for the most part on a small scale. The falling off in construction work in the metropolitan district in the early 1930s had left them 261
in a precarious financial condition. The rate of pay which was given to their workers was materially lower than what the union members engaged in construction work were receiving. The field seemed ripe for unionization, and a campaign was instituted by Local No. 3 to unionize the local switch-board industry. The movement was successful.

Ultimately, every one of the local switch-board manufacturers made an agreement with Local Union No. 3, and

granted increases of pay to its workers. Up to that time, these local union factories had furnished to local contractors in electrical construction work here but a small proportion of the total amount of the material of the type which they made. The great bulk of the business was being done by the plaintiff companies. By the end of 1936, sales of the goods manufactured by the plaintiffs of the same classifications as those manufactured by the New York City manufacturers who had signed contracts with the union, practically ceased. The business was acquired entirely by the local manufacturers. The union maintains that this result was brought about solely because the local
263 contractors formed a desire to use the product of the local manufacturers because of greater convenience in handling of orders and a desire to do business with concerns which employed members of the same union as their employees. The evidence establishes that such expressed motive is the merest subterfuge. In fact, the result was brought about by the combined actions of the contractors and the union. In the case at bar, it was the practically undisputed testimony of all concerned that the union, through its business manager, with the "economic power" of 16,000 or 17,000 members and 200,000 associates in construction work, was in a position where the most powerful of the contractors or of the manufacturers was absolutely incapable of successfully contesting any issue with the union. A contrac-
264 tor cannot do any important electrical work in New York without employing members of Local No. 3. The continuance of his contract with the union depends upon the favorable exercise of the power of the union toward him.

The evidence is clear that the union furnished the contractors organizations with a "fair list". It constituted a "black list" of those not named on it. On that "fair list" were included, as manufacturers of switch-boards, only those companies in New York which employed the mem-

bers of this particular local union. The official publication of the union instructed the members to insist upon the union label—meaning the label of Local Union No. 3—on all products where a label was available. Even though similar products bore the label of other local unions of the International Brotherhood of Electrical Workers, those products were not acceptable. In fact, when the International President of the I. B. E. W. forwarded a "fair list" on which were included the names of other manufacturers of such goods who employed members of other local unions of the "Brotherhood", Local Union No. 3 eliminated, or "black-listed", all of the names approved by the national organization except those employing its own local union 266
members, before furnishing the New York contractors with a "fair list" for use here.

The defendants strenuously insist that this course constitutes merely an attempt by the local union to procure more work for its members. It appears clearly, however, that what happened was that the local manufacturers were forced by the "economic power" of the local union to consent to the signing up of all of their employees by the defendant local, obviously in consideration of their obtaining the exclusive market for their products in the metropolitan area, and the barring from the metropolitan area of all similar products made by others. This resulted in the almost complete curtailment of interstate commerce in such products, entering New York City.

This was brought about by agreements and understandings entered into by the manufacturers, the contractors, and the local union. It resulted, generally, in the creation of a monopoly in New York City for the products of the local manufacturers, who were thereby enabled to raise their prices materially over the open market prices which had formerly resulted from the competition of similar products from factories in other states, which were no longer permitted to be installed in New York City. 267

The cooperation of the contractors was obtained through the creation of a body of which every local New York City electrical contractor employing members of Local No. 3 was required to become a member. The contract under which they operated was known as the "Voluntary Code". Under its terms, every contractor was required to file with the code committee every bid made by the contractor on any work authorized in New York City. This arrangement for filing of bids covered not merely private contracts, but public contracts as well.

In figuring bids on such work, the members were required by the rules to add 35% to the labor cost for "over-
269 head", and 10% to the cost of material as "commission" and to "load" the bid with at least 6% for management cost. If any bidder made a low bid which figured 10% or more below the average of the bids submitted, his bid was subject to investigation to determine in what particulars he was engaged in price-cutting. Price-cutting was penalized by substantial fines.

The code committee consisted of representatives of the various contractors associations of the several boroughs and two members of the local union, business manager Van Arsdale and one of his assistants.

Originally, this "Voluntary Code" contract had been written into the new contract made by the union with the several contractors associations and other contractors,
270 when new agreements were made in the summer and fall of 1936. The man who had formerly been the head of the contractors association, Charles L. Eidlitz, was engaged as chairman of the code committee, having general supervisory power over its operation.

At about the same time the local switch-board manufacturers organized an association and engaged as manager this same Charles L. Eidlitz, paying to him as compensation 1% on all contracts amounting to more than $500.

Thus we have the picture of the most powerful men in the union sitting on the governing board of an organization

which included all of the important electrical contractors in the city, who filed details of their bids with the policing committee on which the union members sat, and the head of that code committee was the same man whose compensation as chairman of the association of switch-board manufacturers depended upon the volume of sales made by the local manufacturers.

Although originally the voluntary code was sent down to the International Office in Washington for the approval of the President before it could be adopted as a part of the new annual contract made by the union with the contractors association, the President of the I. B. E. W. refused his approval of the code arrangement on the sound ground 272
that it was illegal and not a proper enterprise for union activities. Whether or not it actually remained a part of the contract which was signed by the union officers with the contractors was a question as to which there was a sharp conflict of evidence. The International President did not appear to clarify the matter.

In actual operation, however, it seems comparatively immaterial whether it was thereafter embodied in the contract, since it appears indisputably that every contractor of any importance who had a contract with Local No. 3 became bound by the code arrangement, in which the all-powerful business manager of the union participated.

Since all of the local contractors were required by the union rules (sedulously enforced, under penalty of possible expulsion from the union for violation thereof by the 273
union representatives) on every job, to use only Local No. 3 products when such products were available, it was a matter of no concern to the contractor what price he paid for the product, so long as every other contractor had to pay a similar high price for the same material. In fact, the higher the price of these products, the greater the profit to the contractor, since he added, as required by the Code, 10% on the figured cost as a commission. The contractors

made more money; the code administrator, as manager of the switch-board manufacturers association, made more money, and the added cost was passed on to the general contractor, to the owner of the building, and, ultimately, to the public.

One of the local manufacturers did business on a scale that warranted his entry into the general market outside of New York, with published price-lists for the trade. That manufacturer, the evidence established, maintained two separate price lists on articles in the restricted class; one for the New York City market, ranging in some instances 100% higher than the other, priced to meet competition in
275 the free market outside. The evidence is reasonably clear and persuasive that there was a material increase in cost of these products, which, in turn, resulted in increased costs to the citizens of New York at every building, as a result of the monopoly in the market in such manufactured goods. Yet the union insists that there is nothing involved here but an attempt on the part of the union to improve the condition of its members by obtaining higher wages and better working conditions. The union contends that the people of the United States, through Congress, have enacted legislation which legalizes such a course of procedure.

There is no doubt that if the plaintiffs were engaged in selling goods manufactured under conditions which the de-
276 fendant union was undertaking to change by a campaign to enroll their workers in the "International Brotherhood", of which the defendant local is a constituent member, and carried on its campaign alone and unassisted except by other union members; as was the case in the *Duplex Press* case (254 U. S. 443) and the *Bedford Cut Stone* case (274 U. S. 37) such a combination, consisting solely of members of the union, would be regarded as not constituting a combination or conspiracy actionable under the Sherman Anti-

Trust Law, certainly not by injunction. This is made clear by the *Milk Wagon Drivers Union* case.

It becomes essential, therefore, to make an analysis of the facts which, the plaintiffs claim, differentiates the case at bar from such a case.

In the case at bar, as already pointed out, the union undertook to conduct the boycott not solely through its own membership, but by allying itself with contractors and manufacturers. The conspiracy and combination therefore was not a mere association of fellow workers in the union.

The objective of the combination and the conspiracy was not to carry on the unionization, or any change or improvement in working conditions in the factories of the 278 plaintiffs outside of New York State. In the case at bar, business manager Van Arsdale and his associates frankly stated that they were in no way concerned with the working conditions, the rate of wages or the union affiliations of the plaintiffs' factories. It was immaterial to them whether members of other locals of their own union were employed by the plaintiffs.

It appeared that in more than one instance, the plaintiffs had made contracts with employees in their factories, under supervision of the National Labor Relations Board, through the union which the workers in the factory voted should represent them in their negotiations with the management. In other words, several of the plaintiffs had contracts with their employees which had been entered 279 into, under the supervision and, in some instances, under the direction of an agency of the United States Government, which conducted elections to determine what organization should represent such workers. The management had made the only contract which it was legal for it to make, and yet its goods were barred from the New York market solely because it could not employ members of the defendant Local No. 3 of the I. B. E. W.

280 *Opinion of the Special Master.*

It is entirely clear from the record in the case at bar that, with the exception of a minor controversy which was inactive at the time when this action was instituted, there had been no attempt by the defendants to engage in any negotiations with any of the plaintiffs as to terms or conditions of employment or as to representation of its employees in negotiations.

No matter what any one of the plaintiffs might have done at any one of its factories, with regard to wages, hours or other terms or conditions of employment, it could not have avoided the absolute exclusion by the local union, in conjunction with the contractors and manufacturers,
281 barring its products of the prescribed types from the New York City market and stopping that activity of its interstate commerce.

No matter what any one of the plaintiffs could have done in recognizing any group which it was possible for it to recognize in negotiation or arranging terms or conditions of employment, it could not break down the barrier thus erected.

It seems preposterous that the people of the United States, through its Congress, intended to include such a situation as this in the protection afforded to a union in negotiating terms and conditions of employment or gaining the right to negotiate. This certainly is not what anyone, using the English language in its normal sense, could deem to be a "labor dispute". It is a clear-cut at-
282 tempt at an arrangement which shall prevent any competition in New York City from products manufactured by any persons other than those who employ the New York City members of a particular local union.

As counsel for the plaintiffs has forcefully pointed out, if such a combination and conspiracy as has been established in this case is to be held legal, and the plaintiffs should be held entitled to no right to enjoin its operation, it will be but a short time before unions, contractors and

manufacturers in Chicago, Detroit, Philadelphia and other great centers of manufacturing and building will enter into similar combinations and conspiracies and the free flow of interstate commerce in the products of such factories will cease.

Thus, even more effectively than the several Colonies, under the Articles of Confederation, were able to accomplish by interstate tariffs, the free flow of interstate commerce, which was one of the great objectives sought in the adoption of our Constitution, will be blocked—under the claim that, because those engaged in the conspiracy include groups of workers, formed into a labor union, the Constitution and the laws enacted under it entitle them 284
to destroy such interstate commerce.

The law certainly should not be construed as accomplishing any such result. The courts should protect the rights of interstate commerce as sedulously as the rights of individual workers, banded into unions with thousands of members and almost unlimited power. The combination and conspiracy in the case at bar are clearly illegal and its operation should be enjoined.

Analysis of the Evidence

In view of the tremendous mass of evidence which has been submitted to the Court and which has been analyzed and discussed in more than a thousand pages of the briefs and memoranda submitted, and the discussion of the law, 285
covering thousands of pages in the record, the briefs and the opinions in the hundreds of cases cited, it seems essential to outline the main factors in the evidence and the law which have led to the foregoing conclusion.

The Plaintiffs

The Allen Bradley Company is a Wisconsin corporation, with factories in Milwaukee, in which it employs about 830

people. It has a contract with its employees through the United Electrical and Radio Workers of America.

The Allis-Chalmers Company is a Delaware corporation, with its principal factory in West Allis, Wisconsin, where it employs about 7,500 people, and another factory in Boston, Massachusetts, employing about 375 people.

The Clark Controller Company is an Ohio corporation, with factories in Cleveland, Ohio, employing 450 people. It also operates the Sundh Electric Company, which formerly had a factory in Newark, New Jersey, but, since 1934, all of its manufacturing has been done in Cleveland.

Colt's Patent Fire Arms Mfg. Co. is a Connecticut cor-
287 poration, with all of its factories in Hartford, employing about 2,000 people.

Cutler-Hammer, Inc., is a Delaware corporation. It maintains a factory in Milwaukee, employing about 2,500 people, and has had agreements with two American Federation of Labor unions. It also has a factory in New York City in the Borough of the Bronx, employing some 300 workers.

The Electric Controller & Mfg. Co. is an Ohio corporation, with a factory at Cleveland, employing over a hundred people.

The General Electric Company is a New York corporation operating over a dozen factories, two in Lynn, Massachusetts, with 6,700 employees; at Pittsfield, Massachusetts, employing 4,500 people; at Bridgeport, Connecticut,
288 with 3,800 employees; at Schenectady, New York, with 12,000 employees in the manufacturing division; at Bloomfield, New Jersey, with 1,300 people employed; at Philadelphia, Pennsylvania, with 2,500 employees; Erie, Pennsylvania, with 3,400 employees; at Ft. Wayne, Indiana, employing 4,500 people; Decatur, Indiana, employing about 400 people; at Ontario, California and Oakland, California (supplying only western trade); at York, Pennsylvania, with 125 employees; at New Kensington, Pennsyl-

vania, with 150 employees; and a lamp division in Cleveland, which, with other lamp factories, employs 8,000 people. The Lynn, Massachusetts works, pursuant to the results of the election of 1934, under the auspices of the National Labor Relations Board, has collective bargaining arrangements with United Electrical Radio & Machine Workers of America. The Bridgeport plant has a similar arrangement with another local of that C. I. O. union. Similarly, the Schenectady plant has entered into an agreement with another local of the C. I. O. union; likewise, at New Kensington. The Bloomfield, New Jersey, plant dealt with two groups, one the C. I. O. local, and the other an Employees Union. The Philadelphia plant, as a result of 290
an election, deals with the Independent Electrical Workers Organization, and at Erie and Ft. Wayne no designation has been made as to the exclusive workers' bargaining agent. The York plant, as a result of an election, deals with an independent union.

The General Electric Company also has a plant in New York City, employing about 71 persons, at which work is done on switch-boards, and, since 1939, has been negotiating, after an election under the auspices of the National Labor Relations Board, with the defendant union.

The Monitor Controller Company is a Delaware corporation, with a factory in Baltimore.

The Square D Company is a Michigan corporation, with a factory in Detroit, employing about 400 people in manufacturing with a C. I. O. union as a negotiating body; a 291
plant at Peru, Indiana, employing about 140 people, under an agreement with the C. I. O. union; a factory in Milwaukee, employing 250, working under agreements with two American Federation of Labor unions; a factory in California, with 150 people, working under an agreement with the local of the I. B. E. W.

The Trumbull Electric Manufacturing Co. is a Connecticut corporation, with plants in Plainville, Connecticut.

The Westinghouse Electric & Manufacturing Company is a Pennsylvania corporation, with works in East Pittsburgh, employing between 8,000 and 12,000 people, dealing with the C. I. O. union as a bargaining agency, and plants at Nuthall, Pittsburgh, with 400 employees; Attica, New York, with 200 or 300 employees; Bloomfield, New Jersey, with 1,500 employees; Mansfield, Ohio, with 1,200 to 1,500 employees; East Springfield, Massachusetts; Derry, Pennsylvania, employing about 200; Chicopee Falls, Massachusetts, with 300 employees; Lima, Ohio, with 1,000 to 1,200 employees; South Philadelphia, with about 2,000 employees; Cleveland, Ohio, with 400 or 500 employees; Sharon,
293 Pennsylvania, with 2,500 employees; and the Bryant Electric Company plant at Bridgeport.

THE DEFENDANTS

The defendant is a local union designated as Local No. 3 of the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, and originally consisted of journeymen electrical workers and helpers. They now constitute what is known as "Charter A" members, most of them doing electrical installation work, but some fabricating switch-boards in factories, another group wiring and assembling lighting fixtures, and another classification engaged in installation work on alteration jobs.

294 The "Charter B" members consist of various groups engaged in factory work—the portion of the union membership which really makes it a C. I. O. union, in its construction.

Halfway through hearings in this case, at the end of September, 1938, it appeared that only 4,000 of the total membership of 14,600 were journeymen electricians in construction work, the remainder being maintenance men, city employees, superintendents, and men and women en-

gaged in manufacturing electrical equipment, including the lampshade industry and electrical supply houses.

As the defendant's brief truly states, "Local No. 3 is both a craft and industrial local union" (page 143). Before the manufacturing employees were eligible for union membership (which was originally confined to journeymen, apparently), there were, as far back as 1925, 4,500 members—more than the number of journeymen in 1938. In other words, the increase of membership from 4,500 in 1925 to 14,400 in 1938 constituted, in large part, the men and women who were employed in stores and factories, and who, for the most part, have nothing to do with the installation of electrical equipment.

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Local Union No. 3 is the largest and most powerful of the unions in the I. B. E. W. Its territorial limitation was originally the City of New York. For the purpose of unionizing certain plants just outside the City of New York, it persuaded the International office to allow it to take into its membership workers in certain factories in the lower part of Westchester County, although the jurisdiction, as far as electrical journeymen workers was concerned, apparently remained in the Westchester local. A similar exception was granted to Local No. 3 for certain factory workers in northern New Jersey. But, although for a time the products of a factory in New Jersey which employed members of Local No. 3 were permitted entry into the local market, the product of another factory only a few miles away, employing members of another local of the International Brotherhood were barred under the boycott.

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Up to 1933, the construction workers had an eight-hour day and a five-day week, with a rate which began at $4 per day in 1903, and reached $11.20 in 1933. Since that time, for a six-hour day, and a thirty-hour week, the rate has been fixed at $2 per hour, with double pay for overtime. Since 1892 Local No. 3 has been an integral part of

the International Brotherhood, and, at that time, it entered into a contract with the Electrical Contractors Association, which was the predecessor of the current organization, the New York Electrical Contractors Association. Included in the membership of the present union, which was originally composed solely of "inside workers", is the membership, which formerly constituted Local No. 20, of men engaged in "outside work".

The journeymen workers, and those classed with journeymen workers, are known as "Charter A" members, and they have the sole power of electing the executive officers of the organization. It includes electricians doing main-
299 tenance work, motor repair, manufacturing of switches, switch-boards, and control-boards of various types. This group, known as "Class E" first became eligible to the union in 1934. The other large group in "Class A", or "Charter A", membership consists of "Class I" members, who, for the most part, are limited to doing repair and maintenance work, and small installation jobs on one and two-family houses.

There are three main groups in the non-electrical divisions, those who are in factories, making boxes, signal equipment, conduits, wire, and cable, and miscellaneous other materials used in electrical installation. The other divisions in the "Charter B" group include the men and women who make electrical lamps, shades, and novelties, employees of supply houses, and those who make parts for
300 fixtures.

During the period between the financial crash of 1929, and 1934, unemployment was so general that only about one-fourth of the members were employed. During that period, an unemployment fund was created, a part of which was paid in cash to unemployed members, but, before it was finally discontinued, the bulk of it was applied by the union to the payment to itself of the dues of the unemployed members.

Reaction on Labor Conditions in the Defendant Union Resulting from Improved Techniques in the Making of Electrical Equipment.

The developments in electrical equipment which have been reached in the improvement of electrical apparatus for modern uses are responsible for the controversy involved in this case. In the earlier days of electricity, at the turn of the century, there was comparatively little power equipment, and most of the electrical installation had to do with lighting installation. The apparatus was comparatively simple. The journeymen electrical workers or contractors fabricated switch-boards from slabs of wood or stone or composition, with holes drilled through, 302
to carry the appliances and the current-carrying parts, and did practically all of the fabrication on the job.

As modern building developed, with electrically operated pumps, elevators and other apparatus, distribution of the electrical power from the street outlet to the various feed-lines called for more complicated equipment, and the business of fabricating switch-boards gradually became a factory job.

In 1906, a controversy arose as to whether the manufacturer had the right to send his workmen down to do the work of installing a switch-board "on the job". The journeymen workers, who were quick to perceive that their "jurisdiction" was being invaded, protested.

The switch-board was made in a non-union shop, owned 303
by the man who controlled the electrical contracting company which was doing the electrical work on the Altman building. His non-union manufacturing employees undertook to install this switch-board.

A controversy arose, as a result of which the arbitration board of the Building Trades Employers Association rendered a decision that the right to assemble and install the current-carrying parts of the switch-board, under the pro-

visions of the section of the electrical trade agreement then in force, was work which "belonged" to the New York Electrical Workers Union.

Just how broad and significant this decision was in the general conduct of the electrical installations was the subject of bitter controversy between the parties in the case at bar. The union insisted that that decision constituted a primary and fundamental ruling that the work of assembling a switch-board belonged to the journeymen "on the job" and not to the factory workers. The plaintiffs, on the other hand, maintained that the decision was one which merely construed an agreement which was then in
305 existence and was not, in fact, and was not intended to be a general ruling covering the entire business. This point of view is sustained by the fact that, the following year, the union and the contractors entered into a new contract which limited the jurisdiction of the journeymen "on the job" to the wiring of boards delivered unassembled to the job, and permitted the delivery and erection at the job of completed boards by the manufacturers.

After a decision by the Building Trades Electrical Association in 1913, sustaining this limitation, a different clause was put in the agreements of 1917. In 1924, the Council on Industrial Relations, consisting of representatives of the manufacturers, the contractors, and the unions, adopted a "Declaration of Principles" which condemned agree-
306 ments or understandings designed to obstruct the free development of trade or to secure to special groups special privileges or advantages as subversive of the public interest, and shortly thereafter, a self-contained laundry machine, on which the manufacturer had mounted the control wiring, was held to be properly delivered on the job fully wired. The decision found it to be against "good sense, economy and the terms of the agreement", that such wiring on such machines should be removed and again installed at the building.

The situation which existed in the last half of the 1920s and the early 1930s with regard to the claim of the union to the right to fabricate switch-boards on the job is clouded in uncertainty.

The union representatives insisted that the earlier decisions construing agreements which were then in force were basic and applied even when agreements did not contain such provisions. It is quite apparent that this position was not that of the contractors, and it appears from testimony introduced by the defendants that until 1933 or 1934, during which period the development of the art of factory fabrication of switch-boards and control-boards had proceeded very rapidly, these boards for the most part came 308
to the job wired and with the current-carrying parts attached.

It is self-evident that it is uneconomical to have a practice which necessitates the unwiring and dismantling of completely fabricated control-boards, which are now used universally in the distribution of electric power to innumerable appliances for pumping, air-conditioning, elevator service, lighting, heating, and other purposes, and then require the refabrication of such boards at the site of the building in which the board is to be erected.

The evidence does not sustain the defendants' contention that that was the situation prior to 1933 and 1934. Even the business manager and his business agents stated in their testimony that their claimed jurisdiction was widely violated, although they did present some evidence 309
by some journeymen to the effect that switch-boards always came to the job "knocked down". In the light of the other evidence in the case, the fact must be found that there was no agreement or understanding or practice to this effect prior to 1934.

In 1932 and 1933, after the panic of 1929, the building industry in New York was confronted by a falling off of business to practically nothing. As the defendant union

was almost entirely dependent upon installation in new construction work, the journeyman worker was confronted by conditions of acute distress. When Van Arsdale became business manager, he and his associates undertook to obtain for the members of the union doing construction work all additional work on which a claim could be placed. They had observed that, as the result of a boycott on prefabricated lighting fixtures which the union had effectively instituted, a number of the members of the union succeeded in obtaining employment in wiring such fixtures in shops set up for that purpose in New York City.

The evidence clearly establishes that the insistence by
311 the union that completely wired lighting fixtures should not be installed on any building within the jurisdiction of the union but that all such fixtures should be delivered in New York City "knocked down" and the wiring put in here, materially increased the cost of such fixtures in New York City buildings and gave work to but a small group of union members, but the question of added cost was one which never concerned the union.

Van Arsdale and his associates decided that if such a monopoly could be created by refusing to install completed lighting fixtures, there was no reason why a similar boycott should not be instituted in connection with the installation of switch-boards and control-boards, which were constantly becoming more complicated and involved. The unionization of the local switch-board factories and the boy-
312 cott of such products made by the plaintiffs was then effected.

The occasion to make another move in this direction soon presented itself. In recognition of the desperate situation which confronted the building trades and its workers, a tremendous building operation in the center of the city was undertaken, involving the expenditure of many millions of dollars in construction work and material. Buildings of extraordinary height and floor space were designed and in process of erection in the Rockefeller Center group.

Electrical control-boards of tremendous size were required to meet all of the varied uses to which electrical power was to be put in the operation of the buildings. When these boards arrived at the building site, completely fabricated and ready to be connected up by wires from the board to the several distribution points, the amount of work on these prefabricated boards which, thirty years before, would have been done on the job by the journeymen, moved the union leaders to demand that such work should thereafter all be done at the job site; that all installing and wiring, and placing bus-bars and affixing all current-carrying parts must be done by members of the local union at the local site.

314 It did not concern them that all this work had to be done previously at the factory in order to test the apparatus and demonstrate that it was working properly, and that, after such test, additional unnecessary work at the factory was required to disassemble the board and ship the current-carrying parts separately. A stand was made and a strike was threatened, unless an agreement should be entered into which would, as the union phrased it, "preserve the work opportunities of the local union".

Naturally, the representatives of the manufacturers could not see any justification for such a claim, and, when a conference of contractors, union men, and representatives of the manufacturers assembled, and the manufacturers stated their position, the union representatives suggested, and the suggestion was acted upon, that the manu- 315 facturers' representatives be excluded from the further consideration of the problem.

By that time, the union had succeeded in unionizing the switch-board factories in New York City and had begun to make operative its boycott of all switch-boards not manufactured by its own members. In order to create a situation where this arbitrary increase in the cost of equipment should be less distasteful to the contractors, the union

had insisted upon the insertion in its contract with the electrical contractors of a provision that all equipment used on the job should be purchased by the contractor. Under the "Voluntary Code", the contractor was required, in bidding, to include a 10% charge on all equipment purchased, or an arbitrary profit to that extent in the form of a "commission". Under the code also, an arbitrary "overhead charge" of labor costs amounting to 35% of the payroll was also included. It was, therefore, profitable to the electrical contractor to have more expensive switchboards, and it did not concern him, for all of his fellow-contractors were similarly bound, if in the erection of
317 control-boards, added labor cost was imposed—since 35% profit on such added cost accrued to him. While the contractors opposed the practice as uneconomical and tried to reduce the sphere within which the operation of the rules should be confined, they were finally induced to accept an understanding embodied in an agreement dated March 29, 1935 (Exhibit 9).

It contained a compromise, in that it was provided that the panels for control-boards might be shipped with the instruments mounted thereon, but that if such instruments were for any reason shipped separately, the mounting should be done by the electrical contractor and all panels should be mounted on the frames by the contractor, and that all wiring and current-carrying parts, including bus-bars and copper connections, even though they came to
318 the job already bent to fit the connection by the manufacturers, should be assembled on the job by the electrical contractors, employing members of the defendant local.

Excluded from the operation of this agreement were individual starters or control-units of not more than five horse-power and self-contained pump equipment with motors up to and including three horse-power. Jobs already estimated prior to April 8, 1935, were excluded from the operation of it.

Two striking illustrations of the effects of this agreement and its cost to the community are furnished by the job at the sewage disposal plant on Ward's Island and the lift-bridge on the Harlem section of the Triborough Bridge. The enormous, complicated, and involved wiring and current connections on those control-boards were required to be removed from the boards and reconstructed by members of the local union.

The effect of the operation of such a rule is obvious. While the union men who got a few score or a few hundred hours of unnecessary work benefited, to that extent, the contractors and the public were called upon to meet the cost of the original wiring and fabrication, the cost of 320
the unwiring and dismantling, and the cost of the rewiring and reassembling and refabrication—in the Triborough Bridge case, with new wire and new copper connections, discarding the original current-carrying material as junk.

The ultimate effect of the operation of such performance was, of course, to increase the cost of such equipment materially, and, where similar apparatus could be manufactured in union shops here, with the fabrication done by members of the defendant union, this unnecessary cost was avoided, since the union requirements, as they were generally carried out in such cases, did not call for the refabrication of boards manufactured in factories employing members of the defendant local union—even though in a different group and obtaining a lower wage than the journeymen working on the job. 321

Although the agreement did not specify, it was apparently the understanding of those present that what is known as "wall type" equipment, which was normally and almost necessarily delivered "enclosed", to be inset into a wall with merely incoming and outgoing connections, was to be excepted from the operation of the agreement. In the carrying out of this unspecified understanding, a considerable number of differences of opinion arose in the course of the operation of the general agreement.

On the Ward's Island job, in which the electrical equipment contract was awarded to a union contractor for approximately $750,000, more than a hundred control-panels, a metal-clad switch-gear, and bench-boards were required to be "knocked down", dismantled, unwired and reassembled by members of the local union, the total added cost amounting to over $17,000. Only a very small portion of this work was necessitated by any cause other than the union's demands. On scores of other similar control-board jobs, similar incidents occurred, and the clearly evident increase in the cost of construction which resulted was passed on, through the contractor and building, to the
323 general public, indirectly, or, in the case of public works, directly.

There is a sharp conflict in the evidence as to the factors which induced the electrical contractors thereafter to discontinue the procuring of bids and the submission of contracts for the furnishing of equipment from manufacturers outside of New York City, such as the plaintiffs in this action. The testimony of the contractors on this subject was so utterly unreliable and unconvincing that no impartial auditor could believe it. The testimony of representatives of the plaintiffs who had heretofore sold substantial quantities of equipment to the contractors was uniformly to the effect that the contractors explained their refusal to make further purchases as due to the operation of union rules. Many of these conversations were denied by the
324 contractors' representatives whose remarks were quoted, but the denials were far from convincing, and the entire course of conduct of these purchasing agents for the contractors was so entirely consistent with the declarations which they made in declining to ask for or receive further bids from outside manufacturers that no sensible person could harbor a doubt that it was the union's regulations which so summarily cut off almost their entire business that the outside manufacturers thereafter were invited to

make and made no bids on switch-board and control-board equipment such as that made by the local factories.

The Lighting Fixture Wiring Situation

While, in the old days when construction was simpler and less involved, it was economically practicable and justifiable to insert the wires in lighting fixtures, as well as to string wires through ducts or tubes between the lighting fixture and the switch, which controlled it, on the job, the manufacture of lighting fixtures in quantities running up into the hundreds for installation in a single building brought about a situation where the work which the journeymen constituting the defendant union had previously 326
done "on the job" was being done much more economically in factories, thus "depriving them of their jurisdiction".

In the late 1920s the managers of the union who supervised the union men doing the wiring of fixtures, under the direction of Business Agent Jacob Solomon, determined that the union must make a stand against its members being deprived of this work which had originally been "under their control". The defendant local when this question of wiring fixtures arose, undertook to test its power, and, with the aid of threats of strikes in all building industries unless the wiring of fixtures was done by its members, it caused the cancellation or modification of contracts for the installation of pre-wired or factory-wired fixtures, even when the contracting party was the government of the 327
United States.

There were a number of shops in New York City employing journeymen of the defendant union specially trained in fixture wiring, and the union demanded, and succeeded in enforcing its demand, that all fixtures sent in to the New York area for use on extensive building operations must be wired here by members of the local union—even though the factory-wiring had been done by members of another Local of the same "International Brotherhood".

The cost of shipping fixtures unassembled and unwired and the wiring of them in New York City factories was obviously and demonstrably far higher and this increased the expense to the contractor, to the builder, and, finally, to the consuming public.

This demonstration of the power of the defendant union is involved in the pending controversy primarily as a preliminary to the creation and enforcement of similar arrangements covering the principal subject matter of this controversy—switch-boards and power control-boards. The re-wiring of electrical fixtures by members of the defendant union—journeymen, though not journeymen of the "in-
329 stallation" class—came firmly into the grasp of the defendant union before the economic developments at the close of the 1920s.

Boycott of Other Materials

While the union started out as a craft union and a union of the journeymen engaged in electrical construction work, and even now, the unlimited power of franchise is still confined to such journeymen members, the success of the union in unionizing electrical fixture wiring shops and confining the installation of electrical fixtures to its members in such shops at greatly increased prices, and its experience in unionizing switch-board and control-board factories with a consequent increased revenue to the union, and an increased
330 cost to the public, revealed further possibilities to the ambitious leaders of the union.

Other material entered into electrical work, in the manufacture of which no electrical skill, education or training was required. Those engaged in its manufacture were not unionized. As a first step, men engaged in the manufacture of copper wire used in electrical construction in a few comparatively small factories in New York City were organized into a branch class of the union. Every effort

was made to bring about the use of only the wire of such factories, in the construction work conducted by members of the local Electrical Contractors Association. This was a difficult task since, just outside the territorial jurisdiction of Local #3 were two large wire factories employing over a thousand workmen. A special dispensation was obtained from the general officers permitting the local to extend its activities into Westchester County, and these wire factories were subjected to such pressure that their workmen enrolled as members of this special class of the New York City union.

Soon, after this effort to gain increased power and revenues for the union, the campaign was extended to cover floor lamps and their equipment, including shades of one sort or another made by women workers, and a new branch class of the union was created. The boycott was extended also to knife and safety switches and resulted in an effective exclusion from the metropolitan area of such products as did not bear the label of the local union. Finally, the journeymen electrical workers engaged in electrical installation constituted but a minor fraction of the entire group, although they retained the sole right to vote on the general affairs of the union. In other words, Local #3 of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor, became an industrial rather than a craft union, with the added power which the possession of such control over an organized industry gives to the union in its increased finances and power of dictation.

Power of Union

The power of the union to effectuate such arrangements was strikingly demonstrated by its dealings, not only with private contractors, but with the City of New York. All of the union contractors carried on their work under con-

tracts with the union, under which the union agreed not to strike but to negotiate or arbitrate all differences, so that an amicable agreement could be reached, without interruption of work. Almost without exception, the contractors were held to the terms of this contract by the union. The union, however, felt entirely free to violate its few obligations under these contracts whenever needed to demonsrate its power in order to impress those for whom it was working, including the City of New York.

In 1935, the Board of Education made a series of contracts for the construction of new schools. Under the law requiring the award of such contracts to the lowest re-
335 sponsible bidder, a contract was awarded to a contractor who was not the possessor of a contract with the union, although, under the law, he was required to pay and was paying the prevailing rate of wages.

It was not enough to call a strike on the building where this man was at work, but, without the slightest justification, all Local #3 men then employed by union contractors on other construction work in other public schools then in process of erection were summarily called out on strike. The City, through its Board of Education, was confronted with the necessity of breaching its contract with the non-union contractor who had received the award, or else having all work then being done on public schools indefinitely suspended by both the members of Local Union #3 and
336 by all other construction union workers as well.

The cost of upholding the law by suffering such a stoppage of work on all Board of Education construction was so frightful that the responsible officials can hardly be blamed for taking the course which would result in the resumption of building operations and forcing the non-union contractor to give up his contract.

Not only the building of public schools, but highway construction was similarly ruthlessly interrupted when one job on the new Hudson River Highway was awarded to the

lowest bidder, who did not employ members of Local #3 on his particular job. Forthwith, all highway jobs of the city were struck and the electrical construction work on all highways suspended until, again, the cost of such delay seemed too great a price to pay for upholding the right of the lowest bidder to complete his contract.

Similarly, in the construction of new subways, the award of a contract to the lowest bidder, who did not employ members of Local #3, resulted in one of the most expensive strikes of all, and, as in all of the other cases, only in this instance to a greater degree, a tremendous increase in the cost to the city resulted.

While the city had the power to award its contract on 338
such terms and conditions as the courts of New York might find were justified by the laws, the work of building the subways was being materially financed by aid from the Federal Government. Such financial aid was dependent upon the award of the contract to the lowest responsible bidder. The refusal of the union to permit work to go on if such an award was made resulted in repeated refusals of the awarding authority to grant the contract to the lowest bidder, whereupon, not only was a materially increased cost imposed upon the city for the construction of this work, by an award of the contract to a union contractor at a higher figure, but the city forfeited the aid to which it would otherwise have been entitled from the Federal Government in the financing of the contracts.

In every case, the public paid materially higher prices 339
for the work, totalling in all hundreds of thousands of dollars,—moneys which could be raised only by increased contributions from the public in the form of taxes, but, again, the "jurisdiction" of Local #3 was sustained.

This series of events is material as illustrative of the power exercised by this local union not only over the electrical contractors but in all construction work, including that conducted by the community, through its duly chosen

officials. The union contractors' claims to the work were upheld, the union "jurisdiction" was protected, and material increase of costs to the public resulted.

It is not surprising, after the defendant union had shown its power and the group of union contractors were awarded contracts at much greater cost, that these contractors, not satisfied by this protection against competition which they derived from the operation of the voluntary code, worked out a further protection from competition by agreeing among themselves to "rig" bids for city work. The conviction of ten of the most prominent electrical contractors for submitting false bids in this process resulted in a fine and
341 suspension of sentence.

The developments during these years establishing the power of this local union over electrical contractors, electrical manufacturers, and the general contracting industry, brought about its most striking attempt to "protect" the local electrical manufacturers in connection with the work of another great public enterprise, the World's Fair. A number of the plaintiff corporations had expressed a willingness, not only to participate in exhibiting their products at the World's Fair, but to contribute their financial support by the purchase of bonds of the organization to the extent of millions of dollars.

They found themselves in the uncomfortable position of having to construct buildings to house their exhibits by the employment of contractors who declined to use the
342 prohibited equipment of these manufacturers in the construction of their own buildings. The absurdity of this situation was so grotesque that the manufacturers protested to the President of the World's Fair Corporation, Mr. Grover Whalen, and there ensued a remarkable series of negotiations between the manufacturers, the representatives of the union and the World's Fair authorities.

The electrical contractors who had, by official action, just expressed to President Tracy of the International Brother-

hood their wholehearted support of the efforts of the union to confine the installation of electrical products to union-made goods, and which had put into operation a complete ban on certain of the manufactures of the plaintiffs, which had, at that time, been in force for many months, blithely informed Mr. Whalen that there were no manufactured electrical products which were not "freely" bought and readily used by them and by the union men whom they employed. Mr. Van Arsdale, representing the union, joined in these hearty denials of any limitations of purchases. When plaintiff manufacturers asked a specific agreement and undertaking on the part of the contractors and the union that they would install the goods which the 344
contractors had been refusing to purchase and the union had been declining to install, an agreement was made whereby the plaintiff manufacturers were assured that there would be no discrimination against their products, either in the construction of their own buildings, or in construction, generally, at the World's Fair.

It took only a short time to prove that this representation was merely lip-service and that the previously existent boycott of the specific products of the plaintiffs was continuing on World's Fair work as well as in the general contracting work of the electrical contractors. Finally, President Swope of the General Electric Company, threatened the withdrawal of the financial support of his company and the other companies against whose products discrimination was being shown, unless an absolutely free market was 345
maintained. Thereafter, products of the plaintiffs of the types theretofore boycotted were permitted to be used in the buildings of certain of the plaintiffs.

The union, however, was not willing to allow the World's Fair, or the exhibitors to handle the construction work directly, even by employing members of Local #3, but, to protect their cooperating associates, the electrical contractors, they insisted that all electrical work must be

done not only by Local #3 members, but under contracts made with electrical contractors holding contracts with Local #3—thus protecting the electrical contractors in their profit on all purchases of equipment made. A slight but amazing indication of how far this profit-taking went is shown by the insistence of the electrical contractors that even when the electrical manufacturers contributed equipment to be used on these contracts, the contractors should collect a 10% commission on the cost of the donated equipment! Thus is established quite persuasively one of the inducements which led the electrical contractors wholeheartedly to support the project of using union-made goods.

347 The control of the union over the contractors and their organizations was further illustrated by the fact that every one of the larger electrical contractors' associations—in Manhattan, Brooklyn, the Bronx and Queens—were furnished by the union with well-trained agents to act as executive secretaries of the contractors associations. While these executive secretaries had to give up active participation in union affairs while "on leave" in the service of the contractors, they remained in possession of withdrawal cards, which entitled them to resume union membership on the termination of their employment. Naturally, they were in a position to, and did, see to it that there was no unfairness in the dealings of the contractors with the union and its members.

348 CONCLUSION AS TO THE EXTENT OF THE BOYCOTT

It is therefore this Court's finding that the local union conspiring together with the local union contractors and the local union manufacturers, have instituted and made effective boycotts upon the plaintiffs' products which have totally excluded these products from moving in interstate commerce into New York City, or have imposed such restrictions as to rewiring and reassembling as to constitute an undue burden upon such commerce.

In the case of panel boards and switchboards the boycott has become absolutely complete and commerce in these articles has been effectively stifled so far as manufacturers outside of New York City are concerned, with the exception of such products as the local manufacturers are not equipped to make. As to this latter type, traffic in these articles has been so burdened as to constitute an undue burden upon such commerce.

In the case of lighting fixtures, commerce in these articles has been unduly burdened by requirements that such articles be either disassembled and rewired and reassembled in New York shops, or else that such articles be shipped in a knocked-down condition so that they may be 350
wired and assembled in New York shops.

In the case of control apparatus the situation is similar. Such types of apparatus as are manufactured in New York City are used in the Metropolitan area to the exclusion of like products of the plaintiffs. Where the equipment is not manufactured locally its installation in New York is burdened with the requirements of rewiring and reassembling in accordance with the agreement of March 28, 1935.

There has likewise been proven a complete boycott of such types of signalling apparatus, wire and cable, switches, boxes, range cords, luminous transformers, and such other equipment as are manufactured in adequate quantities by the factories operating in New York City.

From this consideration of the evidence and facts established in the case, I now pass to an examination of the 351
law and the legal principles which govern the rights and remedies of the parties to this litigation.

The Law

As already pointed out, three basic statutes deal with, or affect, restraints upon interstate commerce, the Sherman Anti-Trust Law, the Clayton Act and the Norris-LaGuardia Act. In determining whether a combination or conspiracy

in restraint of interstate commerce is involved in the case at bar, only the brief provisions of Section 1 of the Sherman Anti-Trust Law, as construed by innumerable decisions can be invoked. Section 1 of the Sherman Anti-Trust Law reads as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * 15 U. S. C. 1.

While it was contended, from the time when this law was first enacted, that this statute was not intended to,
353 and did not apply to labor unions, Mr. Justice Stone, in the *Apex* case, demonstrates that that contention has been conclusively disposed of. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, at page 489.

The decisions of the Supreme Court establish that when a labor union took action which constituted a combination or conspiracy materially interfering with the flow of interstate commerce, it was subject to the liabilities created by the Act. *Loewe* v. *Lawlor*, 208 U. S. 274 (1908); *Lawlor* v. *Loewe*, 235 U. S. 522 (1915).

When the Clayton Act was enacted in 1914, Section 16 thereof (38 Stat. 737; 15 U. S. C. Sec. 26 thereof) gave to any person injured, or threatened with injury by a violation of the Sherman Anti-Trust Law, the right to obtain in-
354 junctive relief. Under this provision, labor unions which entered upon or threatened to enter upon conspiracies in restraint of interstate commerce were subjected to judgments granting injunctive relief. *Duplex Co.* v. *Deering*, 254 U. S. 443 (1921); *Bedford Cut Stone Co.* v. *Stone Cutters Assn.*, 274 U. S. 37 (1927).

While the decision in the first Coronado case resulted in some doubt as to just what interference with interstate commerce constituted an actionable "restraint" under the

Sherman Law (see *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, decided in 1922), the Court by the unanimous decision in the second *Coronado* case (*Coronado Co.* v. *United Mine Workers*, 268 U. S. 295, 1925) held that, where the action of a union was intended to produce a result which materially interfered with interstate commerce, i.e., where there was an intent to control the supply of the goods involved entering into and moving in interstate commerce, or the price of such goods in interstate commerce, interference based on such intent constituted a restraint within the Sherman Law.

Apparently this construction by the Supreme Court still persists today, as explained and perhaps to some extent 356
modified in *Apex Hosiery Co.* v. *Leader*, (supra), since Mr. Justice Stone in his opinion in that case, speaking for a majority of the Supreme Court, based his conclusions upon the application of the principles of the second *Coronado* case to the set of facts found to exist in the *Apex* case.

It therefore seems clear that where a union participates in a combination, or conspiracy, which is intended to and does cut off from the flow of interstate commerce, articles of manufacture such as are involved in the case at bar, by a practical exclusion of them from the metropolitan area,—with the intended result of limiting the use of products such as are here involved, to those manufactured in New York City by employers hiring only members of that union, 357
—where the intended result is a marked increase in the cost of the products to those who wish to purchase them for use in New York City,—a combination, or conspiracy, actionable under the Sherman Anti-Trust Law has been established, entitling those injured to injunctive relief under the Clayton Act.

The evidence clearly indicates that this combination and conspiracy was intended to give the local manufacturers power to control the market price of such goods as

a result of the monopoly, and to enable them thereby to meet the demands of the union as to the wages and hours of its employees and still make a profit thereon.

While the defendants have throughout steadfastly maintained that there was no violation of the Sherman Law, they have insisted that even though a conspiracy or combination, violative of that Act, were established, the plaintiffs are not entitled to injunctive relief under the provisions of the Clayton Act since the Norris-LaGuardia Act of March 23, 1932 (48 Stat. 70; 29 U. S. C. 101-115) deprives the United States District Court of the right, which it formerly possessed, to grant such relief because, they maintain, the
359 acts charged against the defendants in the case at bar involve a "labor dispute".

Section 1 of the Act provides that:

> "no court of the United States * * * shall have jurisdiction to issue any * * * injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act * * *."

The Act defines a labor dispute—Section 13 (*c*)—as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in
360 negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The plaintiffs maintain that there is no labor dispute, since there is no controversy concerning terms or conditions of employment or association or representation of persons in negotiation or seeking to arrange terms or conditions of employment.

The union, through its counsel, urges that however much of a monopolistic effect may result from the action of the union, in conjunction with the contractors and the manufacturers, in limiting the market in New York City to goods in the proscribed class manufactured by the members of the local union, this court is without jurisdiction either to grant an injunction or to issue a declaratory judgment, since, the Norris-LaGuardia Act has deprived the court of such power.

The defendants urge that under the terms of Subdivisions (a) and (b) of Section 13 of the Norris-LaGuardia Act, the case involves a labor dispute because it concerns "persons who are engaged in the same industry" as used in 362
those subdivisions of the Act.

They read as follows:

"When used in this act, and for the purposes of this act—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers or (3) between 363
one or more employees or associations of employees and one or more employees or associations of employees; or, when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

364 *Opinion of the Special Master.*

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

The origins of the Act afford a clue to the meaning of these sections. The Clayton Act of 1914, in Section 20, thereof provides:

365 "No restraining order or injunction shall be granted by any Court of the United States * * * in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, * * * *" unless certain conditions are fulfilled.

In the *Duplex Press* case and in the *Bedford Cut Stone* case, in both of which so called "secondary boycotts" were involved, the Supreme Court held that the provisions of the Clayton Act prohibiting injunctive relief applied only to cases where a direct employer-employee relationship was involved and did not apply to cases where employees took action against the customers of their employers to
366 enforce their claims against the employer. Thus the quoted provision of the Clayton Act was confined to very narrow channels and the "Magna Carta of Labor" was completely ineffective to prevent the issuance of injunctions whenever the dispute ranged away from a direct conflict with the employer.

It was in order to obviate the effects of these decisions, (as is readily seen from the Committee Reports on the Act while it was a bill in Congress—see also the discussion in the *Lake Valley* case) that the Norris-LaGuardia

Act was passed and particular care was used to make the language so broad that under no conceivable construction could the decisions of *Duplex* and *Bedford* cases be followed.

The language used is certainly broad, but none of the language of Subdivisions (a) and (b) of Section 13 contains any hint as to what may be a "labor dispute". The language deals expressively with the question as to "*who*" can be engaged in a labor dispute, and on that subject, it is most comprehensive.

It surely was not the interest of Congress to designate as a "labor dispute" any and all differences of opinion between such persons as are mentioned in Section 13 Subdivisions (a) and (b). 368

Many conceivable situations can be imagined having no reference to terms and conditions of employment or the representation of employees, which though between the kinds of persons mentioned in Subdivisions (a) and (b) of Section 13 have no conceivable reference to a labor dispute,—e.g., a divorce action between two co-employees, or an action between two employers whereby one seeks to enjoin the other from damming upstream a flow of water to the other's factory.

It is evident, therefore, that the dispute must concern in some way the classes of cases included in Subdivision (c) of Section 13 as "labor disputes" which indeed seem to be so comprehensive as to include nearly every conceivable situation which would bring into conflict capital and labor, as such conflicts are ordinarily and reasonably understood. 369

There is therefore no foundation for the defendants' argument that an injunction is barred in this case solely because the parties to the suit are engaged in the same industry or otherwise fit the language of Subdivisions (a) and (b) of Section 13.

370 *Opinion of the Special Master.*

In every one of the cases which the Supreme Court has decided, construing the Norris-LaGuardia Act to bar the granting of injunctive relief, the facts have shown that there is involved a dispute as to "terms and conditions of employment" or as to the representation of employees under the terms of Subdivision (c) of Section 13:

New Negro Alliance v. Grocery Co., 303 U. S. 552, concerned "terms and conditions of employment" inasmuch as the defendant was trying to force the hiring of negroes in plaintiff's business.

Lauf v. *E. B. Shinner & Co.*, 303 U. S. 323, and *Milk Wagon Drivers Union* v. *Lake Valley Co.*, 311
371 U. S. 91, concerned the "association or representation of persons * * * seeking to arrange terms or conditions of employment" inasmuch as the defendant unions were trying to force plaintiffs' employees to join their union.

The evidence in the case at bar clearly shows that the defendant union was in no way concerned in improving the working conditions, or with the hours and wages, or with the proper representation of the workers in the factories of the plaintiffs. As already pointed out, they frankly stated that nothing that the plaintiffs could have done would have affected their attitude toward the limitation upon, or the exclusion of, the plaintiffs' goods in the construction
372 industry in New York City.

Under such circumstances it seems incredible that the people of the United States should have intended, by the language used by its representatives in Congress in the Norris-LaGuardia Act, that a local union, in a particular industry, in combination with contractors and manufacturers, should effectively bar the use of all products of certain kinds from the construction industry in a City like New York, creating a monopoly on the part of the manufacturers and contractors with whom they had combined, and

not be subject to the injunctive relief that clearly could be granted against its co-conspirators.

There can be no doubt that if the Municipal Legislative body of New York City enacted an ordinance which had the effect of this boycott, the operation of such an ordinance could be prevented by parties prejudiced thereby. In a situation in which the public health and safety is not concerned—and there is no claim that it is concerned in the handling of such products as are involved in the case at bar—even the legislature of the State of New York could not enact a statute imposing such restrictions.

At the time of the bringing of this action, there had been no decision of the United States Supreme Court which 374
dealt with the provisions of the Norris-LaGuardia Act, as it affected the Sherman Anti-Trust Law, and the rights granted by the Clayton Act. Since then there have been several.

The first was *Milk Wagon Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91, decided on November 18, 1940, after the conclusion of the trial herein and the submission of original and reply briefs. In that case, the unanimous opinion of the Court by Black, J., held that, where a controversy arose between the defendant union and so-called independent "vendors", who drove milk wagons and peddled milk and cream obtained from the corporation which was the plaintiff in the action, and where retail stores which sold milk bought from the "vendors" were picketed by members of the defendant Milk Wagon Drivers Union, the plaintiff wholesaler and the "vendors" union were not entitled to the injunctive relief which the Circuit Court of Appeals had granted, because the facts, in the judgment of the Supreme Court, clearly established that a "labor dispute" existed as the cause of the controversy.

In that case, the facts tended to establish that the plaintiff company had so cooperated financially, and otherwise, with the so-called "vendors" that they constituted in effect

employees of the company, and a plaintiff union which took into its membership many of the "vendors" was engaged in a jurisdictional dispute with the defendant union—in which case, clearly, a labor dispute was involved, since it was concerned with the right of representation of employees—one of the specific subjects included in the definition of a "labor dispute" in Section 13 (c) of the Norris-LaGuardia Act.

Mr. Justice Black, in discussing the effect of the Norris-LaGuardia Act and its applicability in cases where injunctions were sought in Sherman Anti-Trust Law cases, quoted from the Congressional Committee Reports and reviewed
377 the "bitter, political, social and economic controversy" which had arisen from the "hostility to 'government by injunction'". The opinion further, by clear implication, overruled the *Duplex Company* and *Bedford Cut Stone* cases, in so far as the granting of injunctive relief was concerned.

In the *Milk Wagon Drivers Union* case, as in the *Bedford Cut Stone* case and the *Duplex Company* case, there was no claim of a conspiracy between the members of the union, against whom the proceeding was brought, and any other body. In each case, there was a clear claim on the part of the union that it was undertaking to affect the terms and conditions of employment of the employees of the plaintiff.

Until the decision in *United States* v. *Hutcheson*, 312
378 U. S. 219, decided on February 3, 1941, it had been widely supposed that the effect given to the Norris-LaGuardia Act, as construed by the Supreme Court in the *Milk Wagon Drivers Union* case, was limited to the withdrawal or modification of the right of injunction which had been granted by the Clayton Act.

The prevailing opinion in the *Hutcheson* case, delivered by Mr. Justice Frankfurter, and concurred in by three of his colleagues, substantially holds that the Norris-

LaGuardia Act, with its reinterpretation of the intent of the Clayton Act, has abolished any criminal liability on the part of a union for violation of the Sherman Anti-Trust Law provisions, *so long as the alleged conspiracy, or combination consists solely of the members of the union.*

The concurring opinion of Mr. Justice Stone in the *Hutcheson* case declines to give this construction to the Norris-LaGuardia Act and decides the case without reliance thereon. The Chief Justice concurred with the dissenting opinion of Mr. Justice Roberts, holding that there was a clear violation of the Sherman Law, justifying a criminal prosecution, and that the criminal law provisions of the Sherman Anti-Trust Law had not been affected by 380
the Norris-LaGuardia Act. The eighth Justice of the Court, Mr. Justice Murphy, did not participate in the decision.

Just what is the effect of the decision of the Court in the *Apex* case, as affecting such conspiracies as were found to be actionable in the *Danbury Hatters* case, (*Loewe* v. *Lawlor, supra*), and the second *Coronado* case, (*supra*), law school professors and law review editors have written hundreds of pages during the past year to explain. Until the Supreme Court, as at present constituted, has handed down an authoritative decision on this point, the Courts below must exercise their best judgment in construing the law in the light of the court's decisions as illuminated by their opinions.

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As affecting the case at bar, the most significant comments in both the *Apex* case and the *Hutcheson* case were the definite exclusion from the sphere of those decisions of such cases as were regarded as being a combination by a union with outsiders, as was the case in *United States* v. *Brims*, 272 U. S. 549. In that case a carpenters' union, in cooperation with employer carpentry contractors and manufacturers of trim and sash, engaged in a combination and conspiracy containing essential features closely simi-

lar to those involved in the case at bar. In that case, to eliminate outside non-union competition, the union, contractors and manufacturers agreed that the latter employ only union carpenters with the understanding that the union would refuse to install non-union-made millwork.

Both Mr. Justice Stone, in the *Apex* case, and Mr. Justice Frankfurter, in the prevailing opinion in the *Hutcheson* case, limited, apparently specifically, the operation of those decisions to cases in which the only combination, or conspiracy, consists of the membership of the union and clearly imply that when the union combines with other parties it forfeits the immunity which it would otherwise possess.

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Mr. Justice Frankfurter, in delivering the prevailing opinion of the court in the *Hutcheson* case, concurred in by three of his colleagues, specifically limits the decision in that case to situations "So long as a union acts in its self-interest and does not combine with non-labor groups" (citing the *Brims* case). (See also the majority opinion of Mr. Justice Stone in the *Apex* case, 310 U. S. 469, at page 501.)

In the case at bar, in which the local union accomplishes its results through the cooperative efforts of electrical contractors and manufacturers of electrical goods, it can not well claim that it has not combined with non-labor groups.

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Inasmuch as the Supreme Court, in the prevailing opinion in *United States* v. *Hutcheson*, 312 U. S. 219, has based the reasoning whereby it reaches the conclusion that the Norris-LaGuardia Act, abolishing the right to an injunction, was intended to, and did, revoke the criminal provisions of the Sherman Anti-Trust Law upon the public policy expressed in the act, it seems worthwhile to consider that "public policy" in order to determine whether "these three interlacing statutes" (312 U. S. 232) have

granted a labor union the right to unite with manufacturers and contractors in creating a monopoly, just because it will promote the "self-interest" of the union. Apparently, the Court in that opinion intended specifically to except such a case as the case at bar.

Certainly, the language of the declaration of public policy would support that conclusion. However strange may seem today the recitals contained in the "Whereas" clause, the conclusion seems in no way to support the contention of the defendants. Section 2 of the Norris-LaGuardia Act of March 23, 1932 (47 Stat. 70; 29 U. S. C. 102) reads as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." 386 387

Since 1932, Congress has enacted the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151-66), and the Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. 201-210), commonly known as the

"Wages and Hours Law". (Cf. also, the Public Contracts Act, 49 Stat. 2036; 41 U. S. C. 35-45.) The administrative bodies created to carry out the terms of these Acts have held almost uniformly, and have been supported by the courts in so holding, that they give rights only to the representatives of the workers and that an employer cannot invoke their protection. Broad and drastic orders enforcing rights of workers against employers have been issued under these acts while the employer has been granted no correlative relief.

Although there have been times when our courts have been regarded as sitting in an ivory tower, oblivious of
389 social, economic and political movements of the day, the Supreme Court, in the *Apex, Lake Valley* and *Hutcheson* cases, has written into its opinions the impressions made upon the judicial mind of such trends as the fight against government by injunction, the attempts made to exempt unions from the operation of the Sherman Law and the historical development of the public movements which resulted in the enactment of the Norris-LaGuardia Act, the latest of these three "interlacing statutes".

Yet, although reference is made to the National Labor Relations Act in the prevailing opinion in the *Hutcheson* case, (312 U. S. 219, 234, n. 1) the marked change in the relative positions of employer and organized employees seems to have passed unnoticed—and the "public policy" recital in the Norris-LaGuardia Act, quoted in full, above,
390 in its recitals in the "Whereas" clause, sounds strange to the ears of those who see labor organizations, backed by powerful administrative agencies, under statutes passed since, forcing even the greatest employer organizations to their knees.

In the case at bar, the defendant local union, with a membership of some 15,000 working men and women, associated with affiliated unions numbering, in gross, some 200,000 employees, towers over the employer groups, the

Electrical Contractors Associations and the local Switchboard Manufacturers to such an extent that it possesses almost the power of life and death over any member of the employing groups.

It would therefore seem that in carrying out the "public policy" declared by the Norris-LaGuardia Act, a reasonable interpretation should be applied to such a term as "labor dispute".

Such a limited interpretation of the words has been given by the highest court of this State, in two cases decided within the last six months, dealing with the New York Statute, almost identical in terms with the Norris-LaGuardia Act (Laws of 1935, Chapt. 477, constituting Section 876-a of the Civil Practice Act). Under paragraph 10 of that law a labor dispute is described, in terms substantially similar to those of the Federal Statute. 392

In construing that statute, Mr. Justice Callahan, in delivering the majority opinion in the Appellate Division, in *Opera on Tour, Inc.* v. *Weber*, 258 App. Div. 516, gave a broad interpretation which so accorded with the contentions of the defendants in the case at bar that ten pages of the defendants' brief were devoted to a quotation from it. Since this case is thus marked as having so material a bearing upon the controversy at bar, the reversal of that decision of the Appellate Division by the Court of Appeals in April of this year seems to afford strong support to the contention of the plaintiffs that no labor dispute is involved in the case at bar. 393

In *Opera on Tour, Inc.* v. *Weber*, 285 N. Y. 348, (April, 1941), the Court of Appeals, by majority of four to two vote, held that where the Musicians Union called a strike of the Stagehands' Union, because the plaintiff was conducting operas by the use of phonographic records instead of instrumental music, the evidence clearly indicated that the Stagehands' Union was entirely satisfied with its wage scale and working conditions and its representation in deal-

ings with its employers. It was also evident that, unless the phonographic music was used, the entire enterprise was financially impracticable and the stagehands, as well as other workers, would lose their employment. The Court of Appeals held that no labor dispute was involved.

In *American Guild of Musical Artists* v. *Petrillo*, 286 N. Y. 226, (July 29, 1941), the same Court decided by a five to two majority that the attempt of the American Musicians Union to boycott the musical artists who joined the American Musical Artists Guild did not constitute a labor dispute.

The argument may be made that the case at bar does not
395 come within the rule of *United States* v. *Brims*, 272 U. S. 549, because, in the case at bar, the union was the actuating party instead of the manufacturers or employers, but in the present status of this industry in this city, certainly the "public policy" of the Norris-LaGuardia Act would seem not to justify the creation and enforcement of such a monopoly, hostile to the public interest, by exempting the union from injunction, while leaving the other parties subject to restraint.

The defendants in their reply brief (page 40) seem to agree with plaintiffs that the contractors and manufacturers are subject to injunction, assuming that the facts establish the monopoly found to exist in the present case—since they decline to argue the "case of the manufacturers or contractors". They "merely assert" that the Norris-
396 LaGuardia Act, while apparently permitting injunctive relief against manufacturers and contractors, bars the court which might enjoin them from issuing similar relief as against the union and its members. If it is to be conceived that this is the law, some court other than this must take the responsibility of so declaring.

The Norris-LaGuardia Act was specifically intended to protect the normal activities of workingmen, in forming a union and acting together to further their interests as

members of the union, from being regarded, solely for that reason, as constituting a conspiracy, even though their union activities might to some extent, affect interstate commerce.

When such a union, reaching such power as this union has, can persuade contractors and manufacturers to join with it in a plan as a direct result of which certain products previously freely entering into interstate commerce for use in New York City are barred therefrom because the contractors will order no such goods except from the local group, it comes with ill grace for it to claim the right to proceed without restraint from the courts while, concededly, its co-conspirators are subject to such restraint. 398

Thus even more effectively than the several Colonies, under the Articles of Confederation, were able to accomplish by interstate tariffs, the free flow of interstate commerce, which was one of the great objectives sought in the adoption of our constitution, will be blocked—under the claim that, because those engaged in the conspiracy included groups of workers, formed into a labor union, the constitution and the laws enacted under it entitle them to destroy such interstate commerce.

In the light of these considerations, and in the light of the declaration of the public policy in Section 2 of the Norris-LaGuardia Act, it must be concluded that the controversy involved in the case at bar is not what can fairly be called a "labor dispute" within the terms of the Norris-LaGuardia Act. 399

Since, therefore, the acts of the defendants, in concert with contractors and manufacturers, constitute a violation of the Sherman Anti-Trust Law, in imposing illegal restraint upon trade, and since the right to injunctive relief against such practices engaged in by a union in conjunction with outside organizations, which was granted by the Clayton Act, has not been repealed by the Norris-LaGuardia Act, the plaintiffs in the case at bar are entitled

to injunctive relief which shall effectively destroy the boycott which the defendant union, in conjunction with the others mentioned, has imposed upon the specified products of the plaintiffs, preventing their use in building construction in the City of New York.

The determination that injunctive relief is available to the plaintiffs in this case does away with the necessity of deciding whether, if such injunctive relief were found not available, the plaintiffs would be entitled to a declaratary judgment. On this point the Court would have done what it is going to do in this case—make findings of fact and conclusions of law on which the plaintiffs may move the
401 Court for declaratary judgment. As to just what the effect of such a declaratory judgment would be in any other proceeding this Court has no power to determine.

Since, however, injunctive relief is to be ordered, the judgment upon which such relief is to be based will necessarily contain recitals constituting a judgment declaring the rights of the parties as sought by the first prayer for relief in the amended complaint.

While both parties, in response to a suggestion from the Court, have, for the aid of the Court, presented tentative proposed findings of fact, such proposed findings were understood, at the time of their submission, not to affect in any way the right of the parties, after the filing of the opinion of the Court, to submit proposed findings of fact and conclusions of law on which the judgment of the Court
402 will be entered.

Such proposed findings of fact and proposed conclusions of law may be submitted within twenty days from the date of the filing of this opinion.

JOHN KIRKLAND CLARK,
Special Master.

Dated: September 30, 1941.

403

Stipulation as to Contents of Special Master's Decision, Findings of Fact and Conclusions of Law, and Dispensing with the Printing of Same.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED by and between the attorneys for the plaintiffs and the defendants that the decision of the Special Master, that is to say, the findings of fact and conclusions of law, made by the Special Master on the 23rd day of November, 1942, and filed with the Clerk of the District Court for the Southern District of New York on the same date, are the same as the findings of fact and conclusions of law set forth in the final decree and declaratory judgment entered in this case, which are set forth in this record, except that Judge Francis G. Caffey modified certain findings of fact and found three (3) new findings of fact. The findings of fact of the Special Master, which were modified, and the new findings made by Judge Caffey, are set forth below: 404

24. This finding is the same as "24" as found by the Special Master, with the exception that Judge Caffey modified this finding by changing the word "defendant" appearing before the name "Cutler-Hammer, Inc." in two instances in this finding to "plaintiff". 405

121. This finding is the same as "121" as found by the Special Master, with the exception that the last sentence of this finding, which read as follows:

"Members of the Union have been penalized by the Executive Board for obtaining employment without the permission of the Business Manager's office, such

penalty having been as extensive as suspension from the Union for three years"

was modified by Judge Caffey to read as follows:

"In 1932 on one occasion several members of the Union were penalized by the Executive Board by suspending them from the Union for a period of three years because they took employment without the consent of the business manager of the Union."

144. This finding "144" as found by the Special Master, read as follows:

407 "In about the latter part of 1937, Local No. 3 commenced unionizing so-called Class 'I' contractors, who were, for the most part, primarily engaged in small alteration work or work on one or two-family houses. By methods and means hereinafter set forth, about 180 of said electrical contractors who had previously been non-union or open-shop contractors were induced to enter into a so-called 'I' agreement. By the terms of this 'I' agreement, these electrical contractors are required to employ Class 'I' members of Local No. 3 exclusively in the performance of their work and are forbidden to compete with the Class 'A' contractors in new construction work or in City, State, Federal and public utility
408 work or in installation, alteration or addition work and repairs in and to occupied buildings performed in conjunction with other building trade operations and under construction conditions which are normally carried out by Class 'A' members of Local No. 3, except that Class 'I' contractors are allowed to work on one and two-family houses."

Judge Caffey modified this finding, as incorporated in the final decree, to read as follows:

"144. In about the latter part of 1937, Local No. 3 commenced unionizing so-called Class 'I' contractors, who were, for the most part, primarily engaged in small alteration work or work on one or two-family houses. By methods and means hereinafter set forth in Findings 188 to 221 inclusive, about 180 of said electrical contractors who had previously been non-union or open-shop contractors were induced to enter into a so-called 'I' agreement. By the terms of this 'I' agreement, these electrical contractors are required to employ Class 'I' members of Local No. 3 410 exclusively in the performance of their work and are forbidden to compete with the Class 'A' contractors in new construction work or in City, State, Federal and public ultility work or in installation, alteration or addition work and repairs in and to occupied buildings performed in conjunction with other building trade operations and under construction conditions which are normally carried out by Class 'A' members of Local No. 3, except that Class 'I' contractors are allowed to work on one and two-family houses."

155-A. Judge Caffey made this new finding entitled finding "155-A", which reads as follows: 411

"155-A. Local No. 3 entered into many trade agreements with individual electrical contractors who were not members of any electrical contractors' associations."

This finding, as above set forth, was not included in the Special Master's findings of fact.

162-A. Judge Caffey made this new finding entitled finding "162-A", which reads as follows:

"162-A. The Voluntary Code was drafted and its organization financed solely by the electrical contractors."

This finding, as above set forth, was not included in the Special Master's findings of fact.

165. This finding is the same as "165" as found by the Special Master, with the exception that the last two words of the finding "hereafter described" were changed to read "described in these findings".

413 166. This finding is the same as "166" as found by the Special Master, with the exception that Judge Caffey modified this finding to the extent of inserting the words ("except as set forth in Finding 158") after the words "the provisions of the Voluntary Code" and before the words "or that the defendant union ever received". • • •.

170. This finding is the same as "170" as found by the Special Master, except that Judge Caffey substituted the word "Area" for "District" in the fourth sentence.

172. This finding is the same as "172" as found by the Special Master, with the exception that Judge Caf-
414 fey modified this finding by deleting the word "That" which was the first word of the finding, and that the words "in consideration of which" appearing after the words "as above set forth" and before the words "said manufacturers obtained the exclusive market" as found by the Special Master, were changed by Judge Caffey to read "as a result of which" • • •.

185. This finding is the same as "185" as found by the Special Master, with the exception that Judge Caf-

fey modified this finding by deleting therefrom the words "50% to 100%" appearing after the words "at prices" and before the words "above those which would prevail" * * *.

198. This finding is the same as "198" as found by the Special Master, with the exception that Judge Caffey modified the Special Master's finding by changing the year "1933" appearing in the first line of this finding after the words "the latter part of" to "1937", and by deleting the words "then recently made" appearing in the second sentence of the finding after the name "Harry Van Arsdale, Jr.," and before the words "business manager of Local No. 3", * * *. 416

214. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Local No. 3 has encouraged and abetted disorder and lawlessness on the part of its members in connection with the above activities by guaranteeing them bail and counsel furnished at the expense of the union in case of their arrest and has spent large sums for bail and counsel fees for members arrested for disorder and lawlessness in connection with such activities. There is no evidence that any of its members has been disciplined by Local No. 3, its Executive Board, officers or agents for any act of public disorder, violence or lawlessness in connection with 417 such activities."

Judge Caffey modified this finding to read as follows:

"214. Local No. 3 has encouraged disorder and lawlessness on the part of its members in connection with the above activities by guaranteeing them bail and counsel furnished at the expense of the union in

case of their arrest and has spent sums for bail and counsel fees for members arrested for disorder and lawlessness in connection with such activities."

215. This finding as incorporated in the Special Master's findings of fact, read as follows:

"As a result of these activities practically every electrical contractor of substantial size or doing substantial business in the City of New York who, prior to the beginning of 1938, did not work under agreement with Local No. 3 has been forced and coerced into entering into what is known as a 'Class I agree-
419 ment' with Local No. 3, whereby they agree to employ 'Class I' members of Local No. 3 exclusively in connection with all their electrical work and whereby they agree not to compete with the 'Class A' contractors in new construction work in City, State, Federal and public utility work and in work involving installations, alterations, additions and repairs in and to occupied buildings performed in conjunction with other building trade operations, except that they are allowed to work on one and two-family houses."

Judge Caffey modified this finding to read as follows:

"215. As a result of these activities set forth in Findings of Fact 188 to 214 inclusive, practically
420 every contractor in the City of New York of the Class 'I' type, 241 in number, except 68 Class 'I' contractors of substantial size, all members of the Greater City Electrical Contractors Association, Inc., who prior to the beginning of 1938, did not work under agreement with Local No. 3, has been forced and coerced into entering what is known as a 'Class I' agreement with Local No. 3, whereby they agreed to employ 'Class I' members of Local No. 3 exclusively

in connection with all of their electrical work and whereby they agreed not to compete with the 'Class A' contractors in new construction work, or in City, State, Federal and Public Utility work and in work involving installations, alterations, additions and repairs in and to occupied buildings performed in conjunction with other building trade operations, except that they are allowed to work on one and two-family houses. Fourteen (14) of the 68 'Class I' contractors hereinbefore mentioned in this finding each signed 'Class I' agreements with a supplemental agreement attached thereto, which supplemental agreement permitted each of them to engage in either 422
'Class I' or 'Class A' work and to employ 'Class I' or 'Class A' members of the union. The remaining 54 of the 68 'Class I' contractors, hereinbefore mentioned in this finding, entered into collective bargaining agreements with Local No. 3 to confine themselves to one major classification of work, but under which as individual members of the Greater City Electrical Contractors Association, Inc., they could elect upon 90 days notice to Local No. 3 to change their classification from 'I' to 'A', or vice versa, provided that within said 90 day period they signed a new agreement covering the new classification and surrendered and terminated their agreement on the previous classification."

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218. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Local No. 3, through such activities has effectively protected all electrical contractors in New York City, doing business with it, from actual and potential competition of electrical contractors not doing business with it."

Judge Caffey modified this finding to read as follows:

"218. Local No. 3, through such activities as are set forth in Findings Nos. 188 to 214 inclusive and 216, has effectively protected all electrical contractors in New York City, doing business with it, from actual and potential competition of electrical contractors not doing business with it."

219. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Local No. 3 has cooperated with union electrical
425 contractors in New York City, to protect them from competition among themselves, by the adoption and approval and participating in the operation of the Voluntary Code of Fair Competition, by limiting the type of work which may be done by certain groups of union contractors, by limiting the area in New York City within which certain union contractors shall do business and by refusing to admit additional contractors within the group where it would result in competition with those already in it."

Judge Caffey modified this finding to read as follows:

"219. Local No. 3 has cooperated with union electrical contractors in New York City, to protect them
426 from competition among themselves, by the adoption and approval and participating, (as set out in findings numbers 158 and 166), in the operation of the Voluntary Code of Fair Competition, by limiting the type of work which may be done by certain groups of union contractors, by limiting to Staten Island the area in New York City within which certain union contractors shall do business and by excluding from doing business in Staten Island certain union con-

tractors and by refusing to admit certain additional contractors within the group where it would result in competition with those already in it."

224. The word "side" appearing after the words "at the" and before the words "of the job" in the fourth paragraph of this finding as found by the Special Master, was changed to the word "site" by Judge Caffey.

229. This finding is the same as "229" as found by the Special Master, with the exception that the words "each of" was inserted after the words "was for" and before the words "the years 1937 and 1938" by Judge Caffey, toward the end of this finding.

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235. This finding is the same as "235" as found by the Special Master, with the exception that Judge Caffey modified this finding to the extent of striking out the word "accordingly" appearing after the words "and the parts thereof" and before the words "caused to be established a group" • • • appearing in the first sentence of this finding, and substituting in its place "about 1928" • • •.

256. This finding is the same as "256" as found by the Special Master, with the exception that Judge Caffey modified the Special Master's finding by deleting the word "That" which was the first word of said finding.

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262. This finding is the same as "262" as found by the Special Master, except that Judge Caffey modified this finding by inserting the words "some of the" after the words "and its observance in connection with" and before the words "electrical construction work in New York City" • • • at the beginning of this finding.

266. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Some of the local union manufacturers of switches when listing and selling switches for use in New York City on union jobs charge substantially more for said switches with the union label of Local No. 3 than they do for said switches to be sold by them without the union label in other than the protected market, although all of such switches are manufactured in the same shops by the same employees, all members of Local No. 3."

431 Judge Caffey modified this finding to read as follows:

"266. Commercial Control & Device Corporation, a local union manufacturer of switches, when listing and selling switches for use in New York City on union jobs charges substantially more for said switches with the union label of Local No. 3 than it does for said switches to be sold by it without the union label in other than the protected markets, although all of such switches are manufactured in the same shop by the same employees, all members of Local No. 3."

283. This finding is the same as "283" as found by the Special Master, with the exception that Judge Caffey changed the word "board" appearing after the
432 words "was required to dis-assemble the" and before the words "and ship the current-carrying parts" to the word "apparatus".

293. This finding is the same as "293" as found by the Special Master, with the exception that the figure "$8,500.00" appearing at the end of the first sentence of this finding, was modified by Judge Caffey to read "$5,800.00".

307. This finding as incorporated in the Special Master's findings of fact, read as follows:

"In the event that equipment bearing the listing or approval of the Underwriters Laboratories, Inc., is rewired and assembled on the job and therefore is no longer entitled to such listing and approval and the company underwriting such risk is unaware of such rewiring and assembling on the job which vitiates such listing or approval, a fraud is perpetrated upon the underwriting company where that company has based its premium upon such listing or approval, which fraud might result in the failure of the owner or lessee of the property to recover 434 under his fire insurance policy in the case of loss."

Judge Caffey modified this finding to read as follows:

"307. In the event that equipment bearing the listing or approval of the Underwriters Laboratories, Inc. is rewired and assembled on the job and thereafter is no longer entitled to such listing and approval and the company underwriting such risk is unaware of such rewiring and assembling on the job which vitiates such listing or approval, a situation is created which might enable the underwriting company to disclaim liability."

312. This finding is the same as "312" as found by 435 the Special Master, with the exception that Judge Caffey inserted the word "has" after the words "where it" in the first sentence and substituted "1937" for "1936" at the end of this sentence.

315. This finding as incorporated in the Special Master's findings of fact, read as follows:

"In the early part of 1936, Local No. 3 undertook to unionize certain New York City manufacturers of

wire and cable, and informed one of said manufacturers that if they did not unionize, the local union contractors would not handle wire produced by them."

Judge Caffey modified this finding to read as follows:

"315. In the early part of 1936, Local No. 3 undertook to unionize New York City manufacturers of wire and cable as well as the Anaconda Co. and the Phelps Dodge Copper Co., Habirshaw Division, both in the vicinity of New York City and informed one of said manufacturers, The Bishop Wire & Cable
437 Corporation, that if it did not unionize, the local union contractors would not handle wire produced by it."

316. This finding is the same as "316" as found by the Special Master, with the exception that Judge Caffey modified said finding by inserting the phrase "including the aforesaid Bishop Wire & Cable Corporation" after the words "in New York City and vicinity" and before the words "who were engaged in the" * * *.

317. This finding as incorporated in the Special Master's findings of fact, read as follows:

"In the early part of 1936, several New York City manufacturers of wire and cable were unionized and
438 individually entered into collective bargaining agreements with Local Union No. 3, which provided for a material improvement of the working conditions for those employees, including higher wages per hour and shorter hours for such rate of wages and further provided that they were authorized to attach the label of Local No. 3 to their product."

Judge Caffey modified this finding to read as follows:

"317. In 1936, 1937 and 1938, several New York City manufacturers of wire and cable were unionized and individually entered into collective bargaining agreements with Local Union No. 3, which provided for a material improvement of the working conditions for those employees, including higher wages per hour and shorter hours for such rate of wages and further provided that they were authorized at their election to attach the label of Local No. 3 to their product."

318. This finding is the same as "318" as found by 440
the Special Master, with the exception that Judge Caffey struck out the word "they" appearing after the word "but" and before the words "represented that members of the union" * * * and substituted in its place the words "some of the defendants".

319. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Commencing in the year 1936, it has been difficult for the plaintiffs to sell wire and cable for use in New York City, because of the fear on the part of contractors and purchasers that if they bought or attempted to use wire or cable without the union label of Local No. 3, they would encounter labor difficulties 441
from Local No. 3, in its attempted installation."

Judge Caffey modified this finding to read as follows:

"319. Commencing in the year 1936, it has been difficult for such of the plaintiffs as manufacture wire and cable to sell wire and cable for use in New York City, because of the fear on the part of contractors and purchasers that if they bought or at-

tempted to use wire or cable without the union label of Local No. 3, they would encounter labor difficulties from Local No. 3, in its attempted installation."

322. This finding is the same as "322" as found by the Special Master, except that Judge Caffey modified this finding by adding the words "except as otherwise stated in Findings 330, 331 and 332" at the end of said finding.

326. This finding as incorporated in the Special Master's findings of fact, read as follows:

443 "Thereafter, Local No. 3 required that luminous transformers used in connection with neon signs should bear the Local No. 3 label. It had formerly carried the Red Arrow Company, located in Newark, New Jersey, manufacturers of luminous transformers, working under agreement with it, upon its Fair List, but when said Company did not renew its agreement with Local No. 3, and signed an agreement with Local 52, I.B.E.W., having jurisdiction of electrical work in Northern New Jersey, where said Company was located, the products of the Red Arrow Company were removed from the Fair List of Local No. 3, because they were made in a factory not employing members of Local No. 3."

444 Judge Caffey modified the said finding of the Special Master, by substituting in its place, Findings of Fact "326" and "326-A", which read as follows:

"326. In 1937, Local No. 3 required that the luminous transformer used in connection with neon signs, manufactured or installed by concerns working under agreement with Local No. 3, should be manufactured by a concern working under agreement with Local No. 3."

"326-A. Local No. 3 had formerly carried the Red Arrow Company, located in Newark, New Jersey, manufacturers of luminous transformers, working under agreement with it, upon its Fair List, but when said Company did not renew its agreement with Local No. 3, and signed an agreement with Local 52, I.B.E.W., having jurisdiction of electrical work in Northern New Jersey, where said Company was located, the products of the Red Arrow Company were removed from the Fair List of Local No. 3, because they were made in a factory not employing members of Local No. 3."

336. This finding is the same as "336" as found 446
by the Special Master, except that Judge Caffey modified the same by inserting the phrase "Except to the extent or at the times otherwise stated in Findings 330, 331 and 332" at the beginning of said finding, before the words "the New York City union electrical contractors and striking from the said finding the number "328" appearing after the word "Findings" and before the numerals "333 and 335" • • •.

337. This finding is the same as "337" as found by the Special Master, except that Judge Caffey modified this finding by inserting the phrase "in Finding No. 260" after the words "as hereinbefore described" and before the words "must be purchased and furnished" • • •. 447

338. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Local No. 3 has from time to time furnished union electrical contractors and their organizations with 'fair lists' containing the names of manufacturers working under agreements with Local No. 3 for the

employment of its members exclusively. These 'fair lists' constituted 'black lists' of those not named on them."

Judge Caffey modified this finding to read as follows:

"338. Local Union No. 3 has from time to time furnished the New York Electrical Contractors Association, and in one instance an electrical contractor who was a member of the New York Electrical Contractors Association, with 'fair lists' containing the names of manufacturers working under
449 agreements with Local No. 3 for the employment of its members exclusively. These 'fair lists' constitute 'black lists' of those not named on them."

341. This finding is the same as "341" as found by the Special Master, except that Judge Caffey modified the said finding by striking therefrom the words "union electrical contractors in New York City" appearing after the words "forwarded to" and before the words "a national 'fair list' " in the second sentence of said finding, and substituted in their place the words "the New York Electrical Contractors Association" and inserted the word "Association" after the words "the said New York Electrical Contractors" and before the words "distributed to all its members" • • •
450 appearing in the third sentence of said finding.

343. This finding is the same as "343" as found by the Special Master, except that Judge Caffey modified said finding by inserting the words "except as to those Class I contractors referred to in Finding #215 who could perform work other than Class I work, under the conditions stated in Finding #215" after the words "formerly performed by them" appearing at the end of the first sentence of said finding.

344. This finding is the same as "344" as found by the Special Master, with the exception that Judge Caffey modified the last sentence of this finding by striking therefrom the words "'Class I' contractors" appearing after the words "the fact that" and before the words "were not members of any Voluntary Code" and substituting in their place the words "members of the Greater City Electrical Contractors Association" • • •.

346. This finding is the same as "346" as found by the Special Master, except that Judge Caffey modified said finding by adding the words "except as otherwise stated in finding #326, 330, 331 and 332" after 452
the words "operating in New York City" at the end of said finding.

349. This finding is the same as "349" as found by the Special Master, except that Judge Caffey modified the said finding by changing the first word in the finding from "Various" to "Some" and by inserting the words "of outlet boxes and switches" after the words "union manufacturers" and before the words "located in New York City" • • • appearing in the beginning of said finding, and by substituting the word "Area" for the word "District" after the word "Metropolitan" and before the words "in some instances."

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350. This finding as incorporated in the Special Master's findings of fact, read as follows:

"In some cases, the extra price charged by union manufacturers for the attachment of the union label to their product is more than the basic price of the article itself without the label."

Judge Caffey modified this finding to read as follows:

"350. In one case in 1935, a supply house charged a union electrical contractor for a meter pan, manufactured by a union electrical manufacturer with a union label thereon the sum of $5.40 which sum was more than the basic price of the article itself without the union label thereon, which was $2.40."

355. This finding as incorporated in the Special Master's findings of fact, read as follows:

"The activities of the defendants in creating unnecessary work, in forcing the duplication of work,
455 in shutting off New York City from the benefits of interstate commerce, and in requiring work to be done at the building which should normally be done in the factory, has caused undue prejudice to the public and imposed economic burdens, which, in many instances, more than treble what would be the normal cost and expense of purchasing and installing the equipment in question were it not for the restrictions imposed by the defendants."

Judge Caffey modified this finding to read as follows:

"355. The activities of the defendants in creating unnecessary work, in forcing the duplication of work, in shutting off New York City from the bene-
456 fits of interstate commerce, and in requiring work to be done at the building which should normally be done in the factory, has caused undue prejudice to the public and imposed economic burdens. The cost of wiring and assembling lighting fixtures in factories employing members of Local No. 3 for installation in buildings in New York City is more than three times such costs for fixtures wired and assembled in the Westinghouse plant outside of

New York City. The cost of disassembling and rewiring control equipment at the building to be installed in New York City is three times the cost of wiring and assembling such equipment at the factory."

362. This finding as incorporated in the Special Master's findings of fact, read as follows:

"Except for an attempt to unionize the employees of Cutler-Hammer, Inc., at its New York City plant, which was abandoned some time in 1935, and an attempt to unionize the New York City Service Shop of General Electric Company, where at the 458
time of the trial of this action General Electric Company was dealing with representatives of Local No. 3 in accord with an order of the National Labor Relations Board, there has been no attempt by the defendants to engage in any negotiations with any of the plaintiffs as to terms or conditions of employment or as to representation of their employees in negotiations."

Judge Caffey modified this finding to read as follows:

"362. Except for an attempt to unionize the employees of Cutler-Hammer, Inc., at its New York City plant as stated in Findings 23 and 24 and an attempt to unionize the New York City Service Shop 459
of General Electric Company, as referred to in Findings 55 to 58 where at the time of the trial of this action General Electric Company was dealing with representatives of Local No. 3 in accord with an order of the National Labor Relations Board, and except with reference to the Westinghouse plant in Newark, New Jersey, as stated in Finding 82, there has been no attempt by the defendants to engage

460 *Stipulation re Special Master's Decision, Findings, etc.*

in any negotiations with any of the plaintiffs as to terms or conditions of employment or as to representation of their employees in negotiations."

367. This finding is the same as "367" as found by the Special Master, except that Judge Caffey modified this finding by adding the words "except as to the General Electric Company plant in New York City mentioned in Finding #59" after the words "or any of them" appearing at the end of said finding.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the plaintiffs and the defendants that the
461 printing of the Special Master's decision and findings of fact and conclusions of law may be dispensed with.

Dated, New York, December 29th, 1943.

McLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs.

HAROLD STERN,
Attorney for Defendants.

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463

Stenographer's Minutes dated June 10, 1943, Setting Forth Opinion of Judge Francis G. Caffey.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

McLANAHAN, MERRITT, INGRAHAM & CHRISTY, Esqrs., Attorneys for Plaintiff (WALTER GORDON MERRITT, Esq., BURGESS OSTERHOUT, Esq., and HYLER CONNELL, Esq., of Counsel).

HAROLD STERN, Esq., Attorney for Defendants.

464

MEMORANDUM OPINION

The Court (orally): My discussion will not be long. At this time I shall not attempt to justify or reason out various views I have adopted. What I shall try to do now is, in substance, merely to indicate quite briefly what I am holding.

There are three law questions. I shall talk about those. Then I shall take up in order and pass on the conclusions of law contained in the report. This will be in the usual way in which we have handled such matters. After I have disposed of those I shall give some general directions.

I shall not go into the matter of whether not the findings of fact are correct. I accept them as heretofore modified. 465 For the purpose of passing on the conclusions of law, I shall assume that the findings of fact as already modified are correct. I believe that if the findings of fact be accepted, they establish that the anti-trust laws have been violated in the way the amended complaint charges. In saying this, for the moment I ignore the Norris-LaGuardia Act. Later I shall deal with that.

Though at the present stage I shall not go into whether the findings of fact are correct, I think it indisputable that,

if they be right, they show that there has been a violation of the anti-trust laws such as the plaintiffs claim.

My discussion of the law questions, therefore, will be on the assumption I have explained.

The first inquiry, in substance is: Does the Norris-LaGuardia Act prohibit the issuance of an injunction?

As counsel apparently agree, and as I think is manifest, the answer to the inquiry turns exclusively on whether the violation involved or grew out of a labor dispute, as that term is employed in the statute. Otherwise put, the problem is whether the controversy involved or grew out of a labor dispute or whether the issuance of an injunction
467 would be contrary to the public policy laid down by the Act.

The essence of the offense alleged is that there was a conspiracy between three groups (Local No. 3, the New York City manufacturers and the New York City local contractors, as alleged) with respect to electrical products unreasonably to restrain interstate trade in certain of those articles.

As I see the findings of fact, and as I see the evidence, neither the commission nor the conduct of the offense was affected by a controversy which grew out of or involved the employer-employee relationship. I am conscious that, in thus phrasing my statement, I am resting my decision on a somewhat different ground, or at least I am expressing the ground in a somewhat different way, from that fol-
468 lowed or adopted by counsel on either side; also that possibly I read the pertinent court opinions somewhat differently from counsel.

At any rate, if we accept the findings of fact, I believe it clear that the offense was not affected or instigated or promoted by a controversy which sprang from or involved the employer-employee relationship. I believe it clear also that, if so, it follows that the violation did not grow out of nor was it contributed to by a labor dispute within the

meaning, nor would the awarding of an injunction infringe the public policy, of the Norris-LaGuardia Act. In that situation, the proposition that there was no such labor dispute seems to me squarely sustained by Columbia River Packers Association v. Hinton, 315 U. S. 143. I shall not go fully into the case cited, but I shall refer to or quote from it to some extent.

The plaintiff was a processor of fish. For use in processing, the plaintiff bought fish from a labor union as well as from independents. It distributed its products in interstate and foreign commerce. The complaint charged that the defendants had attempted to monopolize the fish industry in violation of the Sherman Act and sought an injunction. 470

The defendants were fishermen and members of a union which sold fish. The dispute dealt with in the case was or arose from a controversy with respect to the terms and conditions under which the defendants would sell fish to the plaintiff. As a condition to selling, the members of the union required that buyers stipulate that they would not buy from non-members of the union.

Though the controversy was about the terms and conditions on which the defendants would sell fish to the plaintiff, as I see it there is not the slightest difference in the legal principle governing whether the complainant was a buyer or was a seller.

Among other things the court made these statements: 471

> "The dispute here arose from a controversy about the terms and conditions under which the respondents (defendants) would sell fish to the petitioner" (plaintiff) (p. 144).
>
> "• • • a dispute among business men over the terms of a contract for the sale of fish is something different from 'a controversy concerning terms or conditions of employment, or concerning the association • • • of

persons * * * seeking to arrange terms or conditions of employment' * * *. This definition (section 13 of the Norris-LaGuardia Act) and the stated public policy (section 2) of the Act * * * make it clear that the attention of Congress was focussed upon disputes affecting the employer-employee relationship, and that the Act was not intended to have application to disputes over the sale of commodities" (p. 145).

"* * * the statutory qualification, however broad, * * * does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing. Our decisions" (New
473 Negro Alliance v. Grocery Co., 303 U. S., and Milk Wagon Drivers' Union v. Lake Valley Co., 311 U. S.) "give no support to the respondents' contrary contention, for in both cases the employer-employee relationship was the matrix of the controversy" (pp. 146-7).

"The controversy here is altogether between fish sellers and fish buyers. The sellers are not employees of the buyers or of any other employer, nor do they seek to be. On the contrary, their desire is to continue to operate as independent business men, free from such controls as an employer might exercise. That some of the fishermen have a small number of employees of their own, who are also members of the Union, does not alter the situation. For, the dispute here, relating
474 solely to the sale of fish, does not place in controversy the wages or hours, or other terms and conditions of employment, of these employees" (p. 147).

I have said that I viewed the law somewhat differently from that contended for by either counsel for the plaintiffs or counsel for the defendants. That does not mean, however, that neither side relied on the case from which I have just been quoting. It was definitely relied on by the plaintiffs. Indeed, it was perhaps the chief support on this

branch of the litigation invoked by their counsel. Yet, as I see it, I interpret its effect somewhat differently from the significance attributed to it in argument by either side.

The defendants count chiefly on *Milk Wagon Drivers' Union* v. *Lake Valley Co.*, 311 U. S. 91. They also have urged *New Negro Alliance* v. *Grocery Co.*, 303 U. S. 552, as supporting them.

I consider it unnecessary to go into a discussion of those two cases, however, for the reason that in the *Hinton* case Mr. Justice Black himself disposed of them. He said that they were not to the contrary of what he was ruling in the *Hinton* case, because "in both cases (cited and commented on by the defendants during the argument in the present 476
case as sustaining them) the employer-employee relationship was the matrix of the controversy" (p. 145). I think this is enough to show their inapplicability to and that they do not support the defendants in the case at bar.

As I understand, when the learned Justice said "the matrix of the controversy," as will be indicated by the dictionary, he meant that in the cases distinguished the employer-employee relationship was the origin or foundation of the controversy there involved. On the other hand, in this case I do not see any possibility of maintaining the proposition that the employer-employee relationship was either the origin or the foundation of the controversy. That relationship does not even affect the instant controversy.

Many other decisions have been cited. Many of those 477
lack clarity. Wholly apart from that feature, however, I see no occasion to go into them. I prefer to rest on the *Hinton* case.

I confess that when one reads all the decisions on the subject—and I have read all or most of them—they are a bit confusing. I imagine that many of them are difficult even for lawyers who practice much in labor cases to understand (and I have had little experience with such cases).

I suspect that in many respects what will be the final true interpretation of the Norris-LaGuardia Act has not yet been reached. But, as I see the *Hinton* case, it is a decision (or at least is the most nearly applicable decision yet announced by the Supreme Court) that bears upon the injunction question presented in the instant case. Whether one agree or disagree with Mr. Justice Black, I think it must be conceded that he is clear. In fact, I have the feeling that he makes his meaning clearer than any other member of our highest court today. Accordingly I accept his opinion. It seems to me that his holding is indistinguishable and, if so, it controls me in the instant case.

479 That brings us to the second inquiry. That is this: May there be a declaratory judgment that the defendants have violated the anti-trust laws as charged in the amended complaint?

The contention that there may not be such a declaratory judgment is predicated exclusively on three considerations. These are as follows: (1) There is pending in this court between various of the parties to the present suit a treble damage action involving many of the issues that are also involved in the case at bar. (2) In the instant case there has been no jury trial. (3) Section 15 of Title 15 of the United States Code gives a right to a jury trial in a treble damage action. On the basis of those facts it is urged that, if there were a declaratory judgment in this equity suit that the defendants had violated the anti-trust laws in the
480 respects alleged in the amended complaint, this would be admissible in evidence at the trial of the treble damage action and thus, to the extent that the defendants are the same and the issues are the same in both cases, such defendants would be cut off from a jury trial in the treble damage action.

In *Fleitmann* v. *Welsbach Street Lighting Co.*, 240 U. S. 27, 29, the Supreme Court has settled (Mr. Justice Holmes writing) that a defendant is entitled to a jury trial in a

eble damage action and hence, as is insisted, that the de-
ndants in the instant suit who are also sued at law are
titled to a jury trial in the treble damage action.

On that account, as well as because of the value to a
igant of a jury trial, until yesterday I felt quite un-
cided as to what the answer to the pending question
ould be or as to what was my duty in regard to it. Not
til I had considered the stipulation and order (both
ted July 1, 1937) for the appointment of the master in
is case did my doubts vanish.

In the stipulation for the reference it was agreed:

"1. That this case be referred to John Kirkland 482
Clark, Esq., of No. 72 Wall Street, New York, N. Y.,
as special master, to hear and determine all issues of
law and fact herein, pursuant to the Equity Rules as
promulgated by the Supreme Court of the United
States."

the order thereon, made (as heretofore stated) the same
y, the first provision was:

"ORDERED, that the above entitled case"—that is, the case
at bar—"be and it hereby is referred to John Kirkland
Clark, Esq., of No. 72 Wall Street, New York, N. Y., as
special master to hear and determine all issues of law
and fact therein and report thereon to this Court * * *."

483

Rule 61½, adopted in 1932 (286 U. S. 571), was the equity
le applicable at the time of the stipulation and order;
d is the rule which particularly was referred to in the
der.

It is not to be overlooked that the stipulation and order
e in this suit—and in this suit only.

Plainly, as I see it, by entering into the stipulation and
nsenting to the order mentioned, both sides waived the
ght—if they or either of them ever had a right,—to a

jury trial in the case at bar. Moreover, it should be observed that in the present case no recovery of damage is sought; also that the opinion of Mr. Justice Holmes relates only to treble damage actions.

I say nothing as to the effect (if any) of the stipulation or of the order or of a judgment in this case on the treble damage action. Those are matters to be dealt with, and (as I feel) wholly for determination, by the judge sitting at the trial in that case; and, in so far as I properly can, I wish to avoid doing anything which might be said to establish the law of the case or which might influence the outcome of the treble damage action, unless, of course, that be an in-
485 escapable result.

So far as concerns this case I consider that I am wholly without power to nullify or to deprive either party of the effect of the stipulation or of the order.

The third inquiry is whether the plaintiffs are entitled to a counsel fee.

During the course of the oral argument, I remarked that in my view this court is without power to grant such a fee in this case.

The treble damage section of the anti-trust laws (15 United States Code, section 15) gives to a prevailing plaintiff the right to "a reasonable attorney's fee." That relief, restricted to that purpose, is peremptory and is unequivocal. On the other hand, the court cannot properly award it except as an incident to the successful prosecution of a law action
486 for recovery of damages based on a violation of the anti-trust laws. It was so held in *Decorative Stone Company* v. *Building Trades Council*, 2nd Circ. 23 Fed. (2d) 426, 428. See also *Clabaugh* v. *Southern Wholesale Grocers Association*, C. C., N. D. Ala., 181 Fed. 706, 708.

As I have called to your attention, it must not be forgotten that in this suit no recovery of damages at all is sought,—much less is there an effort to recover treble damages.

So far as I know or has been pointed out to me, this court, either under the general law or under a statute or otherwise, has no power in or as an incident to an equity suit or in or as an incident to a proceeding for a declaratory judgment, to grant a counsel fee. So far as I have been able to ascertain, the limit of its power to include attorney's fees in judgments is where they are specifically provided for by statute; and there is no such statute which is applicable here.

The application, therefore, is denied.

Now I am ready to take up the conclusions of law one by one. I will hear counsel. Are you ready?

Mr. Merritt: Shall I read them? 488

Mr. Merritt (reading):

"1. This Court has, and at the time of the commencement of this action and at all times thereafter had, jurisdiction of the subject-matter of this action because the issues herein involve the interpretation, application and enforcement of the Act of Congress of July 2, 1890, entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies,' together with acts amendatory thereof and supplementary thereto."

Mr. Stern: Your Honor, in view of your Honor's opinion, I am just going to note an objection.

The Court: Oh, yes, I understand. The purpose of my delivering it in advance was to relieve you of having to repeat objections already ruled on. 489

Mr. Merritt (reading):

"2. This Court duly acquired jurisdiction of all the parties to this action."

Mr. Stern: Your Honor, I do not want to waste any time, but do I have to note my objection to each finding?

The Court: You do not, as I understand it. My understanding of the rules is that on appeal you may raise an objection to any finding or conclusion whether or not you have objected to it in the trial court at the time it was made or stated. It is the practice of many lawyers—and I think good practice, though largely for the assistance of the judge—to interpose objections if the matters objected to have not been already ruled on. Isn't that your understanding?

Mr. Merritt: That is my understanding. I shall not
491 claim that Mr. Stern has in any way waived any rights by not entering any objection to any of these conclusions of law. (Reading:)

> "3. The combination and conspiracy to prevent the sale and use of plaintiffs' contemplated products in New York City, described in the foregoing Findings of Fact, and all acts in furtherance thereof, are unlawful and contrary to the laws of the United States, enacted July 2, 1890, and entitled 'An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies' and laws amendatory thereof and supplementary thereto."

Does your Honor rule?

492 The Court: I only rule when there is an objection. That is, on the particular finding.

Mr. Stern: May the record show this——

The Court: You object to every one of these conclusions?

Mr. Stern: Exactly, without in every case stating the objection.

The Court: That is entirely agreeable, isn't it?

Mr. Merritt: That is satisfactory. (Reading:)

"4. The activities of the conspirators hereinbefore described in boycotting certain electrical equipment and materials not made by members of Local No. 3 and in requiring that certain of said equipment for use in New York City be wired and assembled by members of Local No. 3 are not legitimate labor activities falling into the sphere designated by the Supreme Court of the United States as 'licit and not illicit.'

"5. Neither the defendants nor their actions and activities above described are in this case exempt from the operation of the Act of July 2, 1890, entitled 'An 494
Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies' and laws amendatory thereof and supplementary thereto.

"6. This case does not involve or grow out of a 'labor dispute' as defined in the Norris-LaGuardia Act of March 23, 1932 (48 Stat. 70; 29 U. S. C. 101-115) and neither that Act nor anything therein contained deprived this Court of the right and power to grant the relief prayed for by the plaintiffs herein.

"7. No compliance with the terms of said Norris-LaGuardia Act is requisite to the issuance of any injunction herein.

"8. This Court has, and at the time of the commencement of this action and at all times thereafter had, 495
jurisdiction to grant an injunction or issue a declaratory judgment herein as prayed for by the plaintiffs."

Mr. Stern: I object, your Honor, to that finding with respect to the statement "to grant an injunction or issue a declaratory judgment herein as prayed for by the plaintiffs." Frankly, the reason for my making the specific objection is that I did not get the full import of your Honor's,

opinion on the question of declaratory judgment in this case.

The Court: The second question that I took up was whether there may be a declaratory judgment that the defendants have violated the anti-trust laws as charged. Then I went on to say, in effect, that the obstacle to so doing, or perhaps I should say the point that gave me trouble and left me in doubt until yesterday as to what my decision should be, was the ruling of Mr. Justice Holmes. There were other decisions, chiefly of lower courts; but I concluded—and that was the only objection to a declaratory judgment, as I understood; wasn't that so?

497 Mr. Stern: Yes, your Honor.

The Court: I concluded after I had read and studied the stipulation and the order from which I have quoted, relating to the appointment and powers of the special master, that both sides had waived a jury in this case. I think my procedure gives you a right to review me on everything that can be urged against the declaratory judgment. I was in doubt about it until I finally became convinced that in the stipulation, particularly when coupled with the order made pursuant thereto, a jury had been waived.

Mr. Merritt (reading):

"9. The plaintiffs have no adequate remedy at law.

"10. The evidence introduced by defendants over
498 plaintiffs' objections in an attempt to show alleged improper motives on the part of the plaintiffs in bringing this action should be and hereby is disregarded as not tending to prove facts which are material and relevant and which constitute a proper defense herein.

"11. The evidence introduced by defendants in an attempt to prove facts which would constitute a defense that plaintiffs did not come into this Court herein with clean hands is, upon motion previously made by plain-

tiffs stricken out and disregarded as not tending to prove facts which constitute a proper defense herein.

"12. This case involves a controversy involving persons who are engaged in and who have direct or indirect interests in the same industry, trade, craft or occupation,—the making and installation of electrical products.

"13. Unlawful acts of defendants have been threatened and will be committed unless restrained, and have been committed and will be continued, unless restrained.

"14. Substantial and irreparable damage to plaintiffs' property has been caused and will follow. 500

"15. As to each item of relief sought, greater injury would be inflicted upon plaintiffs by the denial of relief than would be inflicted upon defendants by the granting of relief.

"16. The public officers charged with the duty to protect the plaintiffs' property are unable to furnish adequate protection.

"17. There is already pending on the law side of this Court another action entitled: *'The Clark Controller Company, et al.* v. *Local Union No. 3, et al.,'* involving similar issues and some of the parties.

"18. The right of trial by jury is guaranteed to defendants by statute and decisions in actions at law, 501
under the Sherman Anti-Trust Act, and in actions at law, under the Federal Anti-Trust Laws, unless waived.

"19. The activities of Local Union No. 3 in calling strikes on electrical operations conducted by the various City Departments for the purpose of obtaining employment for its construction members, were unreasonable and unlawful.

"20. The law recognizes that Local Union No. 3 has the right to determine whom it should admit as members, so long as that right is exercised reasonably and not arbitrarily.

"21. The law recognizes that Local Union No. 3 has the right to determine with whom it shall enter into collective bargaining agreements.

"22. The law recognizes that Local Union No. 3 has the right to enter into closed shop collective bargaining agreements.

"23. Plaintiffs are entitled to a declaratory judg-
503 ment declaring that the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the Act of Congress of July 2, 1920"—it should be 1890.

The Court: It should be 1890. That correction may be made by consent?

Mr. Merritt: Yes, your Honor.

Mr. Stern: Yes, sir.

The Court: In the fifth line of Finding 23 substitute "1890" for "1920".

Mr. Merritt (continuing reading):

504 "23. Plaintiffs are entitled to a declaratory judgment declaring that the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the Act of Congress of July 2, 1890 entitled an 'Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies,' commonly known as the Sherman Anti-Trust Law, as amended and supplemented.

"24. Plaintiffs are entitled under the provisions of the Clayton Act (Act of October 5, 1914, 38 Stat. 737, 15 U. S. C., Sec. 26) to injunctive relief as prayed for by them in the amended complaint herein.

"25. An injunction should issue herein on behalf of plaintiffs which shall effectively dissolve the combination and conspiracy herein described and prevent any further and other acts in furtherance thereof.

"26. The plaintiffs are entitled to judgment against the defendants in accordance with the foregoing, together with costs and disbursements."

The Court: The objections to the conclusions of law 506
are severally overruled. Now having passed on all the findings of fact and the conclusions of law and in various respects having modified them, the findings of fact and the conclusions of law as so modified are adopted by the court and made its findings of fact and conclusions of law.

There are several general matters I wish to mention.

During the course of the hearings it was stated that one of the defendants had died. Whether or not you have got your record straight on that I do not know. If not, I suggest that you consider clearing that in your final order or judgment.

I believe it was also stated that heretofore the National Electrical Manufacturers' Association had been eliminated from the action. Was an order taken on that? 507

Mr. Merritt: Yes.

The Court: All right. That does not have to be cleared then.

Mr. Merritt: And there were several others that have been added.

The Court: Very well. I just call these things to your attention and leave them to you. That is all.

Now I put to you a practical question. I do not know that there is any settled practice on the point.

The findings and conclusions in the present case are rather lengthy. When an appeal is taken (as I assume will be taken) I think it probably would be very convenient for the appellate judges to have before them the findings and conclusions in the revised form. I do not know whether you have some plan in mind about that or not. I merely call it to your attention. Perhaps you can confer together as to how best to handle the matter. I suppose the original report of the master will have to go up in its original form; but scattered through the minutes there are various changes—some of them quite slight; others rather long—and, unless you have a complete, clean, revised copy, it
509 would be a little burdensome on a judge to have to look up in the record what changes had been made.

One more thing. In the rules—I think it is Rule 65 (b); I haven't my rules here—there is a provision which governs the form and contents of orders for injunctions. I suppose you will take that into account.

You can agree just to suit yourselves on settlement of the judgment. It will be signed by the Clerk; but before he signs it, it must come to the judge who will pass on and approve it. Therefore, just for the sake of the record, you may want to fix a length of time for notice of settlement. If something should happen so that you could not conveniently do it by the date prescribed, I will try to arrange it agreeably for you. Do you want to stipulate judgment to be settled on (say) 10, 20, 30 days' notice or whatever
510 you want? Have you considered that?

Mr. Stern: We have not talked about it at all, your Honor.

The Court: Well, I assume you will have no trouble in agreeing. If you do not agree, you can advise me and I will adjust it.

(Counsel conferred off the record.)

Mr. Merritt: If your Honor please, Mr. Stern has got to be away for some time, and if it would be satisfactory to us he said he would be back anyway by July 1st.

(Colloquy off the record.)

The Court: Your absence will not delay Mr. Merritt in drawing his proposed papers?

Mr. Merritt: No.

The Court: You will not be losing any time by Mr. Stern's absence.

Mr. Merritt: We will go ahead with the papers, and then of course there is the question of costs, which we would like to settle among ourselves by agreement, if we can.

Mr. Stern: The question was, your Honor, if Mr. Merritt should draw the papers and I come back, how much time would I get on notice of settlement?

The Court: I asked you to agree on notice of settlement and said that if it turned out that something prevents you and you can't agree, then if you will come to me I'll settle it. You won't have any trouble about that. Do you want to put something in there just for the form, such as settle judgment on blank days' notice?

Mr. Merritt: Let us say settle on 10 days' notice.

Mr. Stern: I don't like that to be in the record, your Honor. I am not going to be here in 10 days. Ten days' notice from July 1st.

Mr. Merritt: Ten days' notice after your return.

Mr. Stern: Yes.

Mr. Merritt: But not later than July 1st. Is that all right?

Mr. Stern: You mean to return not later than July 1st?

Mr. Merritt: Yes. 513

Mr. Stern: Yes.

Dated, New York, June 10, 1943.

(Sgd) FRANCIS G. CAFFEY,
United States District Judge.

Filed June 15, 1943.

514

Stipulation Covering Objections as to the Form of the Final Decree.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED by and between the attorneys for the plaintiffs and the defendants that at a hearing held before Judge Francis G. Caffey on September 22, 1943, as to the form of the final decree and declaratory judgment, the attorney for the defendants objected to the form
515 of the said final decree and declaratory judgment, as proposed by the attorneys for the plaintiffs, on the ground that that part of paragraph "6" thereof, which read as follows:

> "6. That the Clerk of the Court issue a writ of injunction directed to defendants Local Union No. 3, International Brotherhood of Electrical Workers and the members thereof, and Bert Kirkman, William Beck, Hugh Morgan, Jacob S. Solomon and Gerald Duffy, and each of them, their and each of their agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, or any of them, perpetually and permanently restraining and enjoining them, and each of them, from in any manner combining and conspiring to obstruct, restrain or interfere with
> 516 the interstate trade or commerce of the plaintiffs, or any of them, by"

was too broad in scope and should be amended to read as follows:

> "6. That the Clerk of the Court issue a writ of injunction directed to defendants Local Union No. 3, International Brotherhood of Electrical Workers and the members thereof, and Bert Kirkman, William Beck,

Hugh Morgan, Jacob S. Solomon and Gerald Duffy, and each of them, their and each of their agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, or any of them, perpetually and permanently restraining and enjoining them, and each of them, from in any manner combining and conspiring *with any person, firm or corporation which is a non-labor group* to obstruct, restrain or interfere with the interstate trade or commerce of the plaintiffs, or any of them, by":

that the said objection interposed by defendants' attorney was rejected by Judge Caffey, who signed the decree with paragraph "6" as originally proposed by the attorneys for 518
the plaintiffs.

Dated, New York, December 29th, 1943.

McLanahan, Merritt & Ingraham,
Attorneys for Plaintiffs.

Harold Stern,
Attorney for Defendants.

Final Decree and Declaratory Judgment.

UNITED STATES DISTRICT COURT, 519

Southern District of New York.

[Same Title.]

This cause coming on to be heard on the Report of John Kirkland Clark, Special Master, dated and filed herein November 23, 1942, and on the objections of defendants to said Report, and on motion of defendants to modify the findings

of fact and conclusions of law in said Report and to overrule the objections to said Report filed by plaintiffs and for judgment dismissing the amended complaint herein, and on the objections of plaintiffs to certain parts of said Report, and on the motion of plaintiffs that the Court sustain such objections and in all other respects adopt said Report and grant judgment to plaintiffs as therein recommended, together with costs and disbursements and counsel fees, and the Court being fully advised, it is

ORDERED:

1. That each and every objection filed herein by the
521 defendants to the said Report of the Special Master be and the same is hereby overruled, except that findings of fact in said Report numbered 24, 121, 144, 165, 166, 170, 172, 185, 198, 214, 215, 218, 219, 224, 229, 235, 256, 262, 266, 283, 293, 307, 312, 315, 316, 317, 318, 319, 322, 326, 336, 337, 338, 341, 343, 344, 346, 349, 350, 355, 362 and 367, be and they hereby are modified to the extent hereafter shown in the findings of fact made and adopted as the findings of this Court, and except that new findings numbered 155-A, 162-A and 326-A be and they hereby are made by the Court and added to the findings of fact as hereinafter appears in the findings of fact made and adopted by this Court.

2. That each and every objection filed herein to the said
522 Report of the Special Master by the plaintiffs be and the same is hereby overruled, except in respect to finding of fact No. 166, which is modified as herein set forth.

3. That the said Report of the Special Master, as so modified, is confirmed in all respects, and the following findings of fact and conclusions of law are hereby adopted and made as the findings of fact and conclusions of law of the Court:

Findings of Fact

The Plaintiffs

1. The plaintiff, Allen Bradley Co., is and at the time of the commencement of this action and at all times herein mentioned was a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business in the City of Milwaukee, State of Wisconsin, where, at all times herein mentioned and at the time of the trial of this action, it was, engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity and elsewhere one or more types of electrical equipment, including 524
electrical control apparatus, meaning thereby devices for the application, direction and control of electrical current, hereinafter referred to as "control apparatus".

2. All of the products of the said plaintiff herein mentioned were, at all times herein mentioned and at the time of the trial of this action, manufactured in the State of Wisconsin, and all of its sales and shipments thereof for use in the City of New York and vicinity were, at all times herein mentioned and at the time of the trial of this action, made in interstate commerce.

3. The said plaintiff, at the time of the trial of this action, employed about 830 people in its factories in Milwaukee. 525

4. On or about May 18, 1937, the said plaintiff entered into a labor agreement with the United Electrical and Radio Workers of America, Local No. 1111, a C.I.O. organization, under which it operated until June 4, 1937, when it entered into another agreement with the same Union, under which it was operating at the time of the trial of this action.

5. The plaintiff, Allis-Chalmers Manufacturing Company, is and at the time of the commencement of this action and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City of Milwaukee, State of Wisconsin, where, at all times herein mentioned and at the time of the trial of this action, it was engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity, one or more types of electrical equipment, including oil switches, circuit breakers, control apparatus, switch gear and switchboards.

527 6. The said plaintiff, at the time of the trial of this action, maintained a factory in Boston, Massachusetts, where it employed about 375 people in the manufacture of oil switches, oil circuit breakers and certain electrical control apparatus; and a factory in West Allis, Wisconsin, where it employed about 7,500 people and produced a great variety of products, including electrical switch gear and switchboards.

7. All of the products of the said plaintiff were, at all times herein mentioned and at the time of the trial of this action, manufactured in the States of Wisconsin and Massachusetts, and all of its sales and shipments thereof for use in the City of New York and vicinity were, at all times
528 herein mentioned and at the time of the trial of this action, made in interstate commerce.

8. At the time of the trial of this action, so far as the evidence submitted established, said plaintiff had no agreement with its employees or any labor union acting for said employees.

9. The plaintiff, Clark Controller Company, is and at the time of the commencement of this action and at all times

herein mentioned was a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the City of Cleveland, State of Ohio, where, at all times herein mentioned and at the time of the trial of this action, it was engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity and elsewhere, control apparatus.

10. At the time of the trial of this action, the only factory of the said plaintiff was located in Cleveland, Ohio, where it normally employed about 450 people.

11. The said plaintiff, Clark Controller Company, at the 530
time of the trial of this action and for some time prior thereto, owned and operated the Sundh Electric Company, which, previous to 1934, was located at Newark, New Jersey, and took orders for electrical equipment in the name of said Sundh Electric Company, as well as in the name of Clark Controller Company, although, since 1934, all orders so taken had been filled from the said Cleveland, Ohio, factory of the said plaintiff.

12. All of the products of the said plaintiff were, at all times herein mentioned and at the time of the trial of this action, manufactured in the State of Ohio and all of its sales and shipments thereof for use in the City of New York and vicinity were, at all times herein mentioned and 531
at the time of the trial of this action, made in interstate commerce.

13. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff had no agreement with its employees or any labor union acting for said employees.

14. The plaintiff, Colt's Patent Firearms Manufacturing Company, is and at the time of the commencement of this action and at all times herein mentioned was a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in the City of Hartford, State of Connecticut, where, at all times herein mentioned and at the time of the trial of this action, it was engaged in manufacturing and selling electrical equipment such as control apparatus, knife switches, enclosed switches, safety switches, meter service switches, cartridge fuses, cutout blocks and special subway boxes.

533 15. All of the said plaintiff's products were, at the times herein mentioned and at the time of the trial of this action, manufactured in the State of Connecticut, where at the time of the trial of this action it employed about 2,000 people, and all of its sales and shipments of such products for use in the City of New York and vicinity were, at the times herein mentioned and at the time of the trial of this action, made in interstate commerce.

16. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff had no agreement with its employees or any labor union acting for said employees.

534 17. The plaintiff, Cutler-Hammer, Inc., is and at the time of the commencement of this action and at all times herein mentioned was a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the City of Milwaukee, State of Wisconsin, where, at all times herein mentioned and at the time of the trial of this action, it was engaged in manufacturing and selling electrical equipment such as knife switches, enclosed switches and industrial control apparatus.

18. The said plaintiff, at all times herein mentioned and at the time of the trial of this action, maintained a factory in Milwaukee and a factory in New York City. The New York factory of said plaintiff at the time of the trial of this action, employed approximately 300 people, who are sheet metal workers, assemblers and machinists, manufacturing safety switches and meter switches. Parts for these switches were at the time of the trial of this action made in and shipped from the Milwaukee plant to the New York City plant of said plaintiff for assembly there.

19. The Milwaukee factory of said plaintiff, employed at the time of the trial of this action about 2,500 people 536
and manufactured control apparatus, motor starters and various other electrical devices and apparatus.

20. The Milwaukee factory of the said plaintiff at the time of the trial of this action worked under an agreement with the International Association of Machinists, Lodge No. 1061, and International Moulders Union, Local No. 125, both affiliated with the American Federation of Labor, which agreement applied to all production employees.

21. At the time of the trial of this action there were proceedings pending before the National Labor Relations Board relative to the Milwaukee plant to determine what organization should be the collective bargaining agency of 537
the said employees, the said American Federation of Labor affiliates or a C.I.O. affiliate.

22. All of the products manufactured by the said plaintiff, except such products as were manufactured in its plant in the City of New York, at all times herein mentioned and at the time of the trial of this action were manufactured by said plaintiff at its factory in Milwau-

kee, Wisconsin, and all of its sales and shipments for use in New York City and vicinity of such products manufactured outside the State of New York were, at the times herein mentioned and at the time of the trial of this action, made in interstate commerce.

23. In the early part of 1935, the defendant Local Union No. 3 endeavored to organize and unionize the employees of said Cutler-Hammer, Inc.'s plant located in The Bronx, New York City, and, in the Spring of 1935, many of the employees of the New York plant of Cutler-Hammer, Inc., engaged in the work of manufacturing electrical equipment
538 and materials, enrolled as members of Local Union No. 3.

24. The said plaintiff, Cutler-Hammer, Inc., after being informed that many of its employees had enrolled as members of Local Union No. 3, declined to negotiate with the union or to recognize the union as the collective bargaining agent of its employees, and, shortly thereafter, the said plaintiff, Cutler-Hammer, Inc., moved part of its Bronx plant out of New York and discharged many of its employees, who were members of Local Union No. 3.

25. The plaintiff, The Electric Controller & Mfg. Co., is and at the time of the commencement of this action and at all times herein mentioned was a corporation organized and existing under the laws of the State of Ohio, with its
540 principal place of business in the City of Cleveland, State of Ohio, where at all times herein mentioned and at the time of the trial of this action, it was engaged in manufacturing and selling, among other electrical apparatus and equipment, control apparatus.

26. At all times herein mentioned, and at the time of the trial of this action, the sole factory of the said plaintiff was located in Cleveland, Ohio, where it employed over 100 people.

27. All of the products of the said plaintiff were, at the times herein mentioned and at the time of the trial of this action, manufactured in the State of Ohio, and all of its sales and shipments thereof for use in the City of New York and vicinity were at all times herein mentioned and at the time of the trial of this action, made in interstate commerce.

28. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff had no agreement with its employees or any labor union acting for said employees.

542 29. The plaintiff, General Electric Company, is and at the time of the commencement of this action and at all times hereinafter mentioned was a corporation organized and existing under the laws of the State of New York and engaged in the business of manufacturing and selling electrical equipment and appliances of many kinds.

30. The said plaintiff, at all times herein mentioned and at the time of the trial of this action, maintained and operated two plants at Lynn, Massachusetts, one known as the River Works, where there were employed about 4,800 people, and the other known as the West Lynn plant, where there were employed about 1,900 people.

543 31. The West Lynn plant of the said plaintiff, at all times herein mentioned and at the time of the trial of this action, manufactured electrical meters, instruments and measuring devices, which it shipped out principally to the Philadelphia and Schenectady plants of the said plaintiff for mounting on switchboards and control panels.

32. The said plaintiff at its said River Works and West Lynn plant at the time of the trial of this action, operated under a collective bargaining arrangement with Local 201,

United Electrical Radio and Machine Workers of America, a C.I.O. affiliate, following an election held in these plants in April, 1937, under the auspices of the National Labor Relations Board, which found this Union, then known as the Electrical Industrial Employees' Union, as representing the majority of the employees of said plants. The said plaintiff, at the said two Lynn plants since that time, as required by law, has been and at the time of the trial of this action was carrying on collective bargaining arrangements with said union.

33. The said plaintiff, General Electric Company, at
545 all times herein mentioned and at the time of the trial of this action, maintained and operated plants at Pittsfield, Massachusetts, where it manufactured transformers, lightning arresters, resistors, plastic materials, feeder regulators and large transformers and employed about 4,500 people.

34. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff at the said Pittsfield, Mass., plants had no agreement with its employees or any labor union acting for said employees.

35. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant at Bridgeport,
546 Connecticut, where it employed about 3,800 people and manufactured wire, household electrical appliances, washing machines, sockets for lamps, fans, switches for use in houses, cut-out boxes and general equipment of that character.

36. At the time of the trial of this action, the said plaintiff, at its said Bridgeport plant, recognized Local 203, United Electrical Radio and Machine Workers of America, a C.I.O. affiliate, as the sole collective bargaining agency

for the employees of that plant, following an election held under the auspices of the National Labor Relations Board, the result of which was communicated to the said plaintiff by the said Board in June, 1937, designating said Local 203 as the sole collective bargaining agency. Since that time and at the time of the trial of this action, the said plaintiff, at said Bridgeport plant, as required by law, has dealt and was dealing with that Local as the sole collective bargaining agency.

37. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a factory at Schenectady, 548
New York, where it maintained its general offices. The Schenectady plant, at the time of the trial of this action, employed about 12,000 people in the manufacturing division, where it prepared wire for various other plants of the said plaintiff, manufactured radio transmitters, paint, insulating varnishes, porcelain equipment, carbon products, large-size turbines, large motors and generators of all kinds and operating mechanisms for household refrigerators. In that city, the said plaintiff at the time of the trial of this action, also operated a mica division and a number of contributing departments which made small parts, including a foundry, pattern shop and drop-forge department. The building of industrial control apparatus, at all times herein mentioned and at the time of the trial of this action, was a large division of the Schenectady works but some of the 549
parts of such apparatus were made by the said plaintiff in its factories outside the State of New York. About fifteen per cent. of the products of the Schenectady plants at the time of the trial of this action were sent to other plants to be embodied in other equipment.

38. The said plaintiff, at its said Schenectady plant, as required by law, was at the time of the trial of this action

operating under collective bargaining arrangements with Local 301 of the United Electrical Radio and Machine Workers of America, a C.I.O. affiliate. In this plant, the said plaintiff had dealt with this Local since its designation by the National Labor Relations Board as the sole bargaining agency of the employees and the said plaintiff at the time of the trial of this action had a written collective bargaining agreement with that Local, dated April 1, 1938.

39. The said plaintiff, General Electric Company, at the time of the trial of this action and at all times herein mentioned, maintained and operated a plant at Bloomfield, New
551 Jersey, where it employed about 1,300 people and manufactured air-conditioning equipment, oil furnaces and some starting equipment for control apparatus.

40. No union has been designated as a collective bargaining agency of the employees of the said Bloomfield plant of said plaintiff, and the said plaintiff, at the time of the trial of this action, was dealing with two groups, Local 422, C.I.O., and an inside Employees Union.

41. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant in Philadelphia, Pennsylvania, where it employed about 2,500 people, producing switches, switchboards, switch gear equipment, panel
552 boards, oil circuit breakers, air circuit breakers, knife switches and relays. The said Philadelphia plant at the time of the trial of this action received parts and materials, such as instruments for mounting on switchboards and some wire from the other factories of the said plaintiff to make up its products.

42. An election was held at the said Philadelphia plant under the auspices of the National Labor Relations Board,

between Local 119, C.I.O., and the Independent Electrical Workers Organization, and the Independent Electrical Workers Organization won the election as the sole collective bargaining agency. The said plaintiff, at the time of the trial of this action was, as required by law, dealing in collective bargaining at said plant with the said Independent Electrical Workers Organization.

43. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant in Erie, Pennsylvania, where it employed about 3,400 people and manufactured transportation equipment, including electric engines, small locomotives and street car motors, mill motors and cabinets for domestic refrigerators.

44. At the said Erie plant, the said plaintiff, at the time of the trial of this action, was dealing with Local 506, C.I.O., and the Employees' Economic Association, an inside union, as no agency has been established and no application has been made by either group for an election.

45. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant at Fort Wayne, Indiana, where it employed about 4,500 people producing small motors (under five horsepower) and also maintained a small meter division.

46. In the said Fort Wayne plant, the said plaintiff, at the time of the trial of this action, was dealing with Local 901, C.I.O., and the International Association of Machinists, No. 70, of the American Federation of Labor, and an application had been made by Local 901 and by the Machinists' Union to the National Labor Relations Board for certification as the collective bargaining agency of the employees in said plant.

47. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant at Decatur, Indiana, where it employed about 400 people in the manufacture of fractional horsepower motors.

48. In the said plant, the said plaintiff, at the time of the trial of this action, was dealing with an independent union.

49. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this
557 action, maintained and operated a plant at York, Pennsylvania, where it employed about 125 people and manufactured fireproof insulation and wire.

50. In the said York plant, an election was held under the auspices of the National Labor Relations Board to determine whether Local 115, C.I.O., or an independent union should be recognized as the sole collective bargaining agency of the employees. The independent union received a majority of the votes and, at the time of the trial of this action, said plaintiff, as required by law, recognized and was dealing with said union as said sole collective bargaining agency for said plant.

51. The said plaintiff, General Electric Company, at all
558 times herein mentioned and at the time of the trial of this action, maintained and operated a plant at New Kensington, Pennsylvania, where it employed about 150 people and manufactured conduit and some welded electrodes.

52. At said plant, the said plaintiff, as required by law, was at the time of the trial of this action, dealing with Local 602 of the C.I.O., which by a check of union membership with company payroll lists made by the National Labor

Relations Board, was accepted as the sole collective bargaining agency of the employees of that plant.

53. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a lamp division in Cleveland, Ohio, which produced incandescent lamps, and had lamp factories in various other cities employing in the aggregate about 8,000 people.

54. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff, at its said Cleveland, Ohio, plant, had no agreement with its employees or any labor union acting for said employees. 560

55. The said plaintiff, General Electric Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant in New York City, where it employed about 71 persons, some 10 of whom assembled switchboards, manufactured by the said plaintiff.

56. Some of the employees of the said New York City plant of the said General Electric Company, engaged in the assembly and fabrication of panel boards, switchboards and distribution boards, performed work similar to that performed by some members of Local Union No. 3 engaged in the manufacture of panel boards, switchboards and distribution boards in factories having collective bargaining agreements with Local Union No. 3. 561

57. At some time or times between 1934 and the date of this trial, the defendant Local Union No. 3 made some endeavors to organize and unionize the employees of the said New York City plant of the said plaintiff, General Electric Company.

58. In 1939, during the trial of this action, certain members of said Local Union No. 3, on behalf of its members

who were employed at the said New York City plant of the said General Electric Company, filed a petition with the National Labor Relations Board to be certified as the collective bargaining agent of the employees of that plant, and, under the auspices of the National Labor Relations Board, an election was held on August 17, 1939, which resulted in Local Union No. 3 being designated as the collective bargaining agent of the employees of the said General Electric Company's New York City plant.

59. Thereafter, conferences were held between representatives of Local Union No. 3 and the said General Electric
563 Company, looking toward the consummation of a collective bargaining agreement and in November, 1939, the said union wrote to the said General Electric Company requesting a resumption of the negotiations, but the said General Electric Company has not completed negotiations for a collective bargaining agreement with the said union, covering its members employed at the said New York City plant.

60. The said plaintiff, General Electric Company, at the time of the trial of this action, also had a general collective bargaining agreement with the United Electrical Radio and Machine Workers of America, a C.I.O. affiliate, which was applicable to all its said plants at Lynn, Schenectady, Bridgeport, New Kensington and the Cleveland Lamp Works, and, in the case of each of these plants, had dealt
564 with the respective local unions of this C.I.O. union since the date of their recognition but without an agreement until the aforesaid agreement was entered into.

61. All of the electrical equipment produced and sold by the said plaintiff, General Electric Company, for use in the City of New York and vicinity, with the exception of industrial control apparatus and wire and cable produced in its factory in the City of Schenectady and such switch-

boards and panel boards as were fabricated and assembled in the said plant in New York City, has been, at all times herein mentioned, and was at the time of the trial of this action, manufactured outside of the State of New York and sold and shipped in interstate commerce.

62. General Electric Supply Corporation, since the first part of 1937, has been and, at the time of the trial of this action, was a wholly owned subsidiary of the said plaintiff, General Electric Company. The said Supply Company, at the time of the trial of this action, maintained an office and stock room in the City of New York where, at the time of the trial of this action, it was serving a radius of 75 miles 566
in the Metropolitan area, excluding New Jersey. The said Supply Corporation, at the time of the trial of this action, was dealing in lines of electrical devices, apparatus and equipment of the plaintiff General Electric Company and of other manufacturers whose lines did not parallel those of the plaintiff, General Electric Company. The said Supply Corporation in New York City was, at the time of the trial of this action, and, for some time prior thereto, had been, purchasing lighting fixtures from various manufacturers of such fixtures for resale in its territory.

63. The plaintiff, Monitor Controller Company, is and, at the commencement of this action and at all times hereinafter mentioned, was a corporation organized and existing under the laws of the State of Maryland, with its prin- 567
cipal place of business in the City of Baltimore, in said State of Maryland. The said plaintiff, at all times herein mentioned and at the time of the trial of this action, maintained its only factory in Baltimore, where it produced and was producing a general line of automatic motor starters, control apparatus and resistances.

64. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff had no

agreement with its employees or any labor union acting for said employees.

65. All of the products manufactured by said plaintiff and sold by it for use in the City of New York and yicinity were, at all times herein mentioned and at the time of the trial of this action, sold and shipped in interstate commerce.

66. The plaintiff, Square D Company, is and, at the time of the commencement of this action and at all times herein mentioned, was a corporation organized and existing under the laws of the State of Michigan, with its princi-
569 pal place of business in the City of Detroit, in the State of Michigan.

67. The said plaintiff, at all times herein mentioned and at the time of the trial of this action, maintained and operated a factory in Detroit, Michigan, where it employed about 400 people in the shop and about 200 in the office. This factory, at all times herein mentioned and at the time of the trial of this action, produced electrical switches, electrical panels, switchboards, panel boards, circuit breakers and control apparatus.

68. The said plaintiff, at the time of the trial of this action operated its Detroit factory under an agreement
570 with Local No. 737 of the United Electrical Radio and Machine Workers of America, a C.I.O. affiliate.

69. The said plaintiff, Square D Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a plant in Peru, in the State of Indiana, where it produced products which were shipped to other factories of the said plaintiff for assembling. The said plant at the time of the trial of this action, employed

about 140 people and for about a year and a half had operated under an agreement with a C.I.O. union.

70. The said plaintiff, at all times herein mentioned and at the time of the trial of this action, maintained and operated a factory in Milwaukee, in the State of Wisconsin, where it employed about 250 people and manufactured electrical control apparatus.

71. Since about October, 1937, and at the time of the trial of this action, the said plaintiff operated the said Milwaukee plant under agreements with Federal Labor Union 19926, an American Federation of Labor Union, and Local 66 of the International Association of Machinists, also an A. F. of L. Union. 572

72. The said plaintiff, Square D Company, at all times herein mentioned and at the time of the trial of this action, maintained and operated a factory in the City of Los Angeles, in the State of California, employing about 150 people and manufacturing electrical switches, panels, control apparatus and switchboards.

73. At the time of the trial of this action, the said plaintiff had a collective bargaining agreement as to that factory with Local Union No. B83 of the International Brotherhood of Electrical Workers dated February 28, 1938.

574. All of the products of the said plaintiff were, at the times herein mentioned and at the time of the trial of this action, manufactured outside the State of New York, and all of its sales and shipments thereof for use in New York City and vicinity were, at the times herein mentioned and at the time of the trial of this action, made in interstate commerce.

75. The plaintiff, Trumbull Electric Manufacturing Company is, and, at the time of the commencement of this action and at all times herein mentioned, was a corporation organized and existing under the laws of the State of Connecticut, with its principal place of business in the City of Plainville, in the State of Connecticut, where, at all times hereinafter mentioned and at the time of the trial of this action, it was engaged in manufacturing outside of the State of New York and selling in interstate commerce to customers in New York City and vicinity one or more types of electrical equipment, including panel boards, switchboards, control apparatus and electrical switches.

575 76. The products of the said plaintiff were at the times herein mentioned and at the time of the trial of this action, manufactured in the State of Connecticut, and all of its sales and shipments of such products manufactured in Connecticut for use in the City of New York and vicinity were at the times herein mentioned and at the time of the trial of this action, made in interstate commerce.

77. At the time of the trial of this action, so far as the evidence submitted established, the said plaintiff had no agreement with its employees or any labor union acting for said employees.

78. The plaintiff, Westinghouse Electric & Manufactur-
576 ing Company, is and, at the time of the commencement of this action and at all times herein mentioned, was a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office in the City of Pittsburgh, Pennsylvania.

79. The said plaintiff at all times herein mentioned and at the time of the trial of this action, maintained and operated plants in East Pittsburgh, Pennsylvania, where it em-

ployed between 8,000 and 12,000 people and was manufacturing electrical equipment such as motors, switches, switching equipment, control panels, starters, safety switches, control apparatus and circuit breakers.

80. The said plaintiff, at said East Pittsburgh plants and as required by law, was, at the time of the trial of this action, and, since about July, 1937, had been dealing with the United Electrical and Radio Workers of America, Local 601, a C.I.O. affiliate, as the sole collective bargaining agency of the employees of said plants, pursuant to certificate and decision of the National Labor Relations Board.

81. The said plaintiff, at all times herein mentioned and 578
at the time of the trial of this action, operated and maintained a plant in Newark, New Jersey, which, at the time of the trial of this action, was a service plant for the New York City market and at which there were manufactured some of the smaller units of control apparatus, panel boards and starters. All of the manufacturing and assembling of control apparatus, panel boards, starters and safety switches by this plaintiff for the New York City market at all times herein mentioned and at the time of the trial of this action was done either in East Pittsburgh or in Newark.

82. In January, 1934, the defendant, Local Union No. 3, made an attempt to organize and unionize the men em- 579
ployed by the Westinghouse Electric & Manufacturing Company at its Newark, New Jersey, plant, who were engaged in the manufacture and assembly of switchboards and panel boards, but the said plaintiff declined to consider the proposal or to enter into negotiations with the representatives of Local Union No. 3 for the consummation of a collective bargaining agreement covering its Newark, New Jersey, plant.

83. The said plaintiff, Westinghouse Electric & Manufacturing Company, at all times herein mentioned and at the time of the trial of this action, operated and maintained a foundry and stoker plant in Attica, New York, where 200 or 300 people were employed; a plant in Nuttall, Pennsylvania, where it employed about 400 people in the manufacture of gearing and gear reduction units; a plant in Bloomfield, New Jersey, where it employed about 1,500 people in the manufacture of incandescent bulbs and X-ray tubes; a plant at Mansfield, Ohio, where it employed 1,200 to 1,500 people in the manufacture of household appliances, refrigerators and ranges; a plant in East Springfield, Mas-
581 sachusetts, where it manufactured compressors for refrigerators; a plant in Derry, Pennsylvania, where it employed about 200 people and produced porcelain insulators; a plant at Chicopee Falls, Massachusetts, where it employed about 300 people and made radio equipment; a plant in Lima, Ohio, where it employed 1,000 to 1,200 people and manufactured small motors; a plant at South Philadelphia, Pennsylvania, where it employed about 2,000 people and manufactured steam turbines and equipment for steam plants; a plant at Cleveland, Ohio, where it employed 400 to 500 people and manufactured lighting fixtures; a plant operated by the Bryant Electric Company, a subsidiary, at Bridgeport, Connecticut, where sockets and receptacles were manufactured, and a plant at Sharon, Pennsylvania, where it employed about 2,500 people and manufactured
582 power and distribution transformers.

84. All of the products of the said plaintiff were, at the times herein mentioned and at the time of the trial of this action, manufactured outside of the State of New York and all of its sales and shipments thereof for use in the City of New York and vicinity have, at all times herein mentioned, been and, at the time of the trial of this action, were made in interstate commerce.

85. None of the plants of any of the plaintiffs at the time of the trial of this action was operating under a collective bargaining agreement with the defendant Local Union No. 3, International Brotherhood of Electrical Workers. At the time of the trial of this action neither Local Union No. 3, nor any of the plaintiffs were so situated that Local Union No. 3 could be recognized and dealt with as a collective bargaining agency except for the plant of the General Electric Company located in New York City, where at the time of the trial of this action it was being so recognized, and except for the New York factory of the Cutler-Hammer Company, where it did not appear that the said Local Union No. 3, at the time of the 584
trial of this action, represented any of the employees.

The Defendants

86. The International Brotherhood of Electrical Workers is and, at all times herein mentioned, was an unincorporated association affiliated with the American Federation of Labor, which has a membership of over 300,000 persons engaged in the installation and manufacturing of electrical devices, equipment and apparatus such as that manufactured by the plaintiffs and is the second largest organization affiliated with the said American Federation of Labor.

87. The said International Brotherhood of Electrical 585
Workers is and, at all times herein mentioned, was subdivided into local unions, situated in various parts of the United States, each of which has its own officers, by-laws and regulations, subject to the constitution and regulations of said Brotherhood, and has jurisdiction over workers in the trade within territorial limits specified by the said Brotherhood.

88. Among the local unions so affiliated with the said International Brotherhood of Electrical Workers (hereinafter referred to as the I.B.E.W.) is and, at all times herein mentioned, was the defendant Local Union No. 3 of International Brotherhood of Electrical Workers, hereinafter referred to as "Local No. 3".

89. The said defendant, Local No. 3, is and, at the time of the commencement of this action, was and, at all times since, has been a labor union and a voluntary unincorporated association and had, at the time of the trial of this action, and for several years has had a membership of
587 nearly 15,000 members, who are, in large part, journeymen electricians and workers engaged in the trade of fabricating, erecting and installing electrical devices, equipment and apparatus, such as those manufactured by the plaintiffs, and others of whom are persons employed in the manufacture or sale of electrical devices, equipment, apparatus, lamps, lamp shades and novelties and others in the maintenance of such devices, equipment and apparatus.

90. Local No. 3, at the time of the commencement of this action and at all times herein mentioned, maintained its general headquarters for the transaction of its business in the Borough of Manhattan, City of New York, and in the Southern District of New York, and is and, at all times herein mentioned, has been the only important
588 Union of such electrical workers within said area.

91. Local No. 3 operates and, at all times herein mentioned, operated under a charter granted by said International Brotherhood of Electrical Workers and under by-laws adopted by said Local and approved by said Brotherhood and through elected and appointed officers and agents and derives and, at all times herein mentioned, derived income amounting annually to hundreds of thousands of

dollars from dues and assessments paid by its members, a portion of which is paid over to said International Brotherhood of Electrical Workers.

92. Local Union No. 3 at all times herein mentioned operated under and was and is bound by the provisions of the Constitution of the International Brotherhood of Electrical Workers, which Constitution contains the following statement as to its objects:

> "The objects of the International Brotherhood of Electrical Workers are, namely: To organize all electrical workers into local unions, to develop and to maintain a higher standard of skill, to encourage the formation of schools of instruction for teaching the practical application of electricity and for trade education generally, to promote reasonable methods of work, to cultivate feelings of friendship among those of our craft, to settle all disputes between employers and employees by arbitration (if possible), to assist each other in sickness or distress, to secure employment, to reduce the hours of daily labor, to secure adequate pay for our work, and by legal and proper means to elevate the moral, intellectual and social conditions of our members, their families and dependents, in the interest of a higher standard of citizenship."

93. Local No. 3 claims and, for several years past, has claimed jurisdiction of all work involved in the installation of electrical devices, equipment and apparatus in buildings and structures in the five boroughs of the City of New York, hereinafter referred to as the "Metropolitan Area", as well as all work involved in the manufacture of electrical fixtures, devices, apparatus and equipment to be used within the said area.

94. Local No. 3 is and has been for some time past the largest and most powerful of the local unions affiliated with the I.B.E.W. and is both a craft and an industrial local union.

95. Local No. 3, by the exercise of its economic and other force, has unionized the entire industry of large scale installation of electrical equipment in New York City and has, likewise, unionized the factories in New York City which produce certain types of electrical equipment essential in building construction of today.

593 96. The territorial jurisdiction of Local No. 3 was originally limited to the City of New York. For the purpose of unionizing certain factories just outside the City of New York, the jurisdiction of Local No. 3 as to manufacturing employees has been extended by the International Office of the I.B.E.W., on application of said Local No. 3, to those employed in certain manufacturing plants in Northern New Jersey and in the lower part of Westchester County, New York State, and in Hastings, New York, although jurisdiction in said districts outside of New York City, as far as electrical journeymen workers are concerned, remains in the Locals of the I.B.E.W. previously having jurisdiction in said localities.

97. Prior to 1928, Local No. 3 consisted solely of jour-
594 neymen electrical workers and helpers engaged in the fabricating and installing of electrical devices, equipment and apparatus in and about buildings, structures and elsewhere, the members of which class of workers are now designated as "Charter A" members of said Local No. 3.

98. In the early part of 1928, Local No. 261 of the International Brotherhood of Electrical Workers, consisting of men engaged in wiring and assembling lighting fixtures

in shops in New York City, merged with Local No. 3, and the members of Local No. 261 became known as "Class C" members of Local No. 3.

99. In about July, 1934, the by-laws of Local No. 3 were amended to provide for a "Class E" membership to consist of shop men engaged in the manufacturing of switchboards, panel boards, service switches, meter equipment, and their enclosures.

100. Until May, 1935, the membership of Local No. 3, except for those members in the "Class C" and "E" divisions, consisted almost wholly of men engaged in the installation and repair of electrical equipment in and about buildings and structures. 596

101. In or about May, 1935, the charter of Local No. 3, which up to that time included only "A" charter members, was amended, in accordance with certain provisions of the constitution of the I.B.E.W. so as to include "B" charter members who are primarily workers engaged in the manufacture of electrical equipment and apparatus.

102. Since May, 1935, the members of Local No. 3 have been divided into those who are designated as "Charter A" members and those who are designated as "Charter B" members.

597

103. The "Charter A" members were at the time of the trial of this action about 7,000 in number, and were made up primarily of those who are designated as "Class A" members, about 5,000 in number, who are for the most part journeymen electricians engaged in the installation and repair of electrical fixtures, devices, equipment and apparatus in and about buildings and structures in the Metropolitan Area, and members engaged in the assembling

and wiring of lighting fixtures in shops, originally called "C" members but now designated as "Class A" members.

104. "Charter A" members of Local No. 3 other than "Class A" members, are divided into various smaller subdivisions bearing letter designations, including "Class E", created in 1934, consisting of men engaged in fabricating switchboards in the factory and "Class I", created in 1937, consisting of men who are members primarily limited by Local No. 3 to installation and repair of electrical fixtures, devices, apparatus and equipment in one- and two-family houses and alteration work in private buildings and structures, but who, as a general rule, are not permitted to
599 make such installations in new construction work or in City, State, Federal and public utility work, or to do any such work and repairs in and to any buildings where other union building trades are working.

105. The "Charter A" membership of Local No. 3 also includes "Class D" members, who are men engaged in winding and repairing electric motors and also men engaged in the maintenance of electrical equipment in buildings; "Class F" members, who are electrical inspectors employed by the municipality of the City of New York; "Class G" members, who are superintendents employed by electrical contractors, and "Class H" members, who are men engaged in the installation, service and shop work of the electric protective
600 or burglar alarm industry.

106. The "Charter B" members of Local No. 3, some 8,000 in number at the time of the trial of this action, are made up primarily of those employed in factories making boxes, signal equipment, conduits, wire and cable and miscellaneous other materials used in electrical installation, also men and women who make electrical lamps, shades and novelties and employees of supply houses, engaged in

the sale of electrical equipment, and those who make parts for fixtures, and are further classified in various subdivisions with letter designations, according to the particular type of product manufactured. At the time of the trial of this action, the "Charter B" members had no right to vote for officers of Local No. 3 or for members of the Executive Board or on general business at any meeting of the membership of Local No. 3. The amount contributed annually by the "Charter B" members in dues for the support of the Local No. 3 was about equal to the amount contributed annually by the "Charter A" members in dues for the support of said Local No. 3.

602 107. The By-Laws of Local No. 3 provide that the Business Manager of the Union shall be elected every four years, while other officers shall be elected every two years. Harry Van Arsdale, Jr., was at the time of the trial of this action, and since in or about October, 1933, has been Business Manager of Local No. 3.

108. The constitution of the I.B.E.W. provides and has provided, that the Business Manager of a local union shall be held responsible to the Local union and to the International Office of the I.B.E.W. for results in organizing his territory, for establishing friendly relations with employers and in protecting the jurisdiction of the I.B.E.W.; that he shall appoint any and all representatives or assistants, who shall work directly under him and be subject to his 603 authority; that he may discharge them at any time and that, when a representative has been discharged, he shall not be re-employed in any capacity during the term of office of the Business Manager without his consent.

109. The By-Laws of Local No. 3 provide that the Executive Board of the union, an elected body, shall not at any time inject itself in, or allow itself to be brought into the affairs or matters coming under the jurisdiction

of the Business Manager's office and that said Board shall not interfere in, or attempt to interfere in, or attempt to handle any agreement, question or dispute arising with employers.

110. The By-Laws of Local No. 3 give the business manager discretionary power to call strikes, either sympathetic or directly involving Local No. 3.

111. The real management of Local No. 3's labor affairs rests almost absolutely in the power of the Business Manager and those whom he appoints as business agents.

605 112. The defendant, Bert Kirkman, was, at the time of the trial of this action, and, since 1933, has been President of Local No. 3. Under the Constitution of the I.B.E.W. and the By-Laws of Local No. 3, he was the executive of the union in charge of finances and administrative matters.

113. The defendant, William Beck, was, at the time of the trial of this action, and, since 1933, has been Treasurer of Local No. 3, whose duties under the Constitution of the I.B.E.W. and under the By-Laws of Local No. 3 were to receive moneys from the financial secretary of Local No. 3, deposit them in a bank or banks, and pay them out upon order or a warrant.

606 114. The defendant, Hugh Morgan, was at the time of the trial of this action, and, since about 1926, has been Assistant Business Manager of Local No. 3, appointed as such by the Business Manager and holding his position at the pleasure of said Business Manager and under his supervision, direction and control.

115. The defendant, George W. Whitford, was, at the time of the trial of this action and, since July, 1927, had been Recording Secretary of Local No. 3.

116. The defendant, Jacob S. Solomon, was, from about 1926 to about the first of January, 1939, an organizer and business agent of Local No. 3, holding his said position at the pleasure of the Business Manager of Local No. 3 and under the supervision, direction and control of said Business Manager.

117. The defendant, Gerald Duffy, was at the time of the trial of this action, and, since about 1936, has been a business agent of Local No. 3, appointed by the Business Manager of said union and holding his office at the pleasure of, and subject to the supervision, control and direction of said Business Manager. 608

118. The constitution of the I.B.E.W. and the By-Laws of Local No. 3 prescribe various rules and regulations governing the conduct of the members as to their relations with the union, with each other, and in their employment. In most instances, the penalty for violation of any of these rules is not fixed by the Constitution of the I.B.E.W. or by the By-Laws of Local No. 3, but the determination of the penalty, which may be expulsion or suspension from the union, removal from employment or a money fine, or a combination of these, is left for the determination of the Executive Board of the Union.

119. Under the By-Laws of Local No. 3, the Executive Board thereof consists of the President, Vice-President 609 and five elected members. Under the Constitution of the I.B.E.W., the Executive Boards of its Local Unions, including Local No. 3, have the power to take any action that the Local Union can take and which should be taken prior to the next regular meeting of the Local Union after the Executive Board meeting.

120. Under the Constitution of the I.B.E.W. and under the By-Laws of Local No. 3, the Executive Board also has

the power to act as a Trial Board and to hear and determine all charges and try all members, except officers and business agents of Local Unions, for any violation of the Constitution of the I.B.E.W., or of the By-Laws or Working Rules of Local 3 or of agreements between the Union and employers, and to fix the penalty, unless such penalty is fixed by the Constitution of the I.B.E.W. or by the By-Laws of the Local Union, for any violation of which it finds a member guilty. The Constitution of the I.B.E.W. provides that the Executive Board of the Local Union shall submit a report of its actions and findings to each regular meeting of the Local Union but that no approval or disap-
611 proval is to be made or action taken by the Local Union, nor is any discussion to be allowed, when the Board reports on the cases of members charged with violations of the Constitution of the I.B.E.W. or the By-Laws and working rules of the Local Union.

121. In 1938 and for some years prior thereto, by agreements with the various employers of journeymen electrical workers and apprentices, employment of all such workers by such employers was required to be made through the Business Manager's office of the Union and the Business Manager had and habitually used the power to determine which members of the Union should be employed by a contractor who needed electrical workers. In 1932 on one occasion several members of the Union were
612 penalized by the Executive Board by suspending them from the Union for a period of three years because they took employment without the consent of the business manager of the Union.

122. By agreement with electrical contractors, the Business Manager had the power to and did designate which members should be sent to jobs as job stewards and foremen, at higher rates of pay.

123. Records were kept by the Business Manager's office of the time spent by each member in acting as a picket on jobs where electrical work was being done by others than members of Local No. 3 and in picketing the places of business and plants of electrical contractors and manufacturers not employing members of Local No. 3. Preferred positions on the list of members to be assigned by the Business Manager's office to employment were given by the Business Manager's Office to members who had done picketing, according to the amount of time they devoted thereto.

124. The officials of Local No. 3, and its administrative agents, at the time of the trial of this action, maintained and, for many years past, have maintained, control over 614
the membership of Local No. 3, requiring them not to take a job except through union headquarters, giving them preference in the assignment of jobs based on the extent of picket duty done by them, governing them by the threat or imposition of severe discipline for violation of union rules and regulations. Such control was also maintained by the fact that half of the contributing members had no right to vote for officers, or for the members of the Executive Board of the union, or as to the expenditure of union funds; also through provisions of the By-Laws which deny members the right to organize political opposition to incumbents in office, and the right of free assembly to discuss union affairs at meetings outside of the union, and which prescribed penalties for failure to report any viola- 615
tion of union rules, regulations or policies by any member of the union.

125. Local No. 3 has adopted and enforced, for some years prior to and at the time of the trial of this action, a policy and practice of refusing to accept applications for apprenticeships to learn the trade of an electrical journeyman, unless the applicants are sons or brothers of some

member of Local No. 3, and has cancelled all such applications theretofore received, where the applicants were not such sons or brothers.

126. Under the Constitution of the International Brotherhood of Electrical Workers, Local Union No. 3 was authorized and called upon to organize and unionize all workers engaged in all branches of the electrical industry in the City of New York and vicinity.

127. From time to time, Local Union No. 3 conducted organization and unionization campaigns among workers in various branches of the electrical industry in the City
617 of New York and vicinity, and the membership in Local Union No. 3 was 4,492 in 1925, 4,886 in 1926, 5,738 in 1927, 6,893 in 1928, 6,997 in 1929, 7,034 in 1930, 7,174 in 1931, 6,670 in 1932, 6,353 in 1933, 6,270 in 1934, 5,888 in 1935, 5,479 in 1936, 7,609 in 1937 and, 14,389 in 1938.

128. From 1903 down to the time of the trial of this action, the working conditions of the members of Local Union No. 3, engaged in the installation and construction branch of the electrical industry, have frequently been altered, as to hours of work per day and per week and as to rates of pay per hour from $4.00 per day in 1903 for an eight hour day to $12.00 per day in January 1, 1938 for a six hour day.

618

129. Since January 1, 1938, up to the time of the conclusion of the trial of this action, the members of the union engaged in the installation and construction branch of the electrical industry continued to work at the same rate of wages per hour and for the same number of hours per day and per week.

130. As contracts came up for renewal, Harry Van Arsdale, as business manager of the union, fought for and

from time to time obtained a reduction of the number of hours which a union member could work during any week or any day at the specified rate of compensation.

131. The growth of Local No. 3 from 6,270 members in 1934 to 14,389 members in 1938 was due to its expansion into new fields theretofore uncontrolled by Local No. 3, and not to any increase in the union membership of journeymen or other workers in the fields from which it derived its membership in 1934.

132. Local Union No. 3, for the benefit of its members, among other things, has conducted at times a school for the special training of its members in the various branches of the electrical industry, in which it has invested approximately $40,000 worth of electrical equipment. 620

133. Local Union No. 3, for the benefit of its members, among other things, has maintained a compensation department, which handled for its members, without any charge, cases arising under the Workmen's Compensation Law, and which, since 1926 has handled 3,625 cases, with awards amounting to half a million dollars.

134. Local Union No. 3, for the benefit of its members, among other things, maintains a Pension Fund under which all members upon reaching 65 years of age are entitled to receive $42.00 per month for the remainder of their lives. 621

135. Local Union No. 3, for the benefit of its members, among other things, maintained an unemployment fund during the depression years from 1931 to 1934 for its unemployed members, out of which it distributed $15.00 per week to its unemployed members, and from which it paid to or for the benefit of its members approximately $1,800,000, a substantial part of which was used to pay the dues of such members.

136. Local Union No. 3, for the benefit of its members, among other things, maintained a sick fund up to 1935, from which approximately $200,000 as sick benefits was paid to its members.

137. Local Union No. 3, for the benefit of its members, among other things, is affiliated with the Union Health Center, which affiliation entitles its members to medical examination, x-rays and medical treatment at half rates and free medical treatment in the event its members are unemployed.

623 138. Local Union No. 3, for the benefit of its members, among other things, has made provision for insurance, as well as death benefits.

139. Each local union of the I.B.E.W. issues, and authorizes to be used, and for many years past has issued and authorized to be used, an identification stamp or label, to be placed or stamped upon electrical devices, equipment and apparatus manufactured, assembled or fabricated in shops or plants employing members of that union. The union label or stamp so issued or authorized to be used by the various local unions of the I.B.E.W. is identical with such stamps or labels issued or authorized to be used by all other local unions of the said I.B.E.W. except for the fact that the label issued by each local union contains the
624 respective local number of the local union issuing or authorizing such label or stamp to be used. Such label or stamp can be used or authorized only with the sanction and approval of the I.B.E.W.

Electrical Contractors

140. Within the Metropolitan Area there are and, at all times herein mentioned, have been electrical contractors,—persons, firms and corporations engaged in the busi-

ness of securing and performing contracts to furnish, install and connect electrical equipment for use in and about buildings and structures and elsewhere within said area. The conduct of the respective businesses of said contractors requires the employment of skilled electricians such as members of Local No. 3, and the purchase, sale and use of all of the various types of electrical equipment manufactured by the respective plaintiffs.

141. More than 90% of such electrical contractors doing work of any substantial size in the Metropolitan Area and substantially all electrical contractors performing electrical contracts of substantial size in said area are and, 626
at all times herein mentioned, have been contractors working under agreements with Local No. 3, which provide and, at all times herein mentioned, have provided for the exclusive employment by such electrical contractors of members of Local No. 3 in all branches of electrical work of the kind and nature described as "within the jurisdiction" claimed by said local. Such contractors are hereinafter referred to as "union contractors".

142. Practically every electrical contractor in the City of New York of any size or doing construction work of any importance, has for some years been and, at the time of the trial, was a union contractor employing members of Local No. 3 exclusively.

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143. At the time of the trial of this action, there were approximately 500 union electrical contractors of whom approximately 300 were what are known as "A" contractors, meaning thereby contractors who employ Class "A" members of Local No. 3 and who are in no way restricted by the terms of their agreements with Local No. 3 as to the type of work which they may perform, and the remainder were what were known as Class "I" contractors.

144. In about the latter part of 1937, Local No. 3 commenced unionizing so-called Class "I" contractors, who were, for the most part, primarily engaged in small alteration work or work on one- or two-family houses. By methods and means hereinafter set forth in Findings 188 to 221 inclusive, about 180 of said electrical contractors who had previously been non-union or open-shop contractors were induced to enter into a so-called "I" agreement. By the terms of this "I" agreement, these electrical contractors are required to employ Class "I" members of Local No. 3 exclusively in the performance of their work and are forbidden to compete with the Class "A" contrac-
629 tors in new construction work or in City, State, Federal and public utility work or in installation, alteration or addition work and repairs in and to occupied buildings performed in conjunction with other building trade operations and under construction conditions which are normally carried out by Class "A" members of Local No. 3, except that Class "I" contractors are allowed to work on one- and two-family houses.

145. A substantial majority of the electrical contractors of substantial size located in the Borough of Manhattan in the City of New York, being about 45 in number, were, at the time of the trial and, since about 1933, have been members of an organization called the "New York Electrical Contractors' Association, Inc.", which, at all times
630 herein mentioned, acted for its members collectively in their relations with Local No. 3 and in that capacity enters and, at all times herein mentioned, entered into contracts and agreements with said local in behalf of such members, and said association has been utilized and operated concertedly by said members to act for them in that capacity. Since the latter part of 1934, said members of the aforesaid Contractors' Association, by reason of contract entered into in their behalf by said Association, have been continuously

and, at the time of the trial, were parties to contracts and agreements with Local No. 3, providing for the exclusive employment of members of Local No. 3 in connection with all electrical work.

146. The said New York Electrical Contractors' Association has, since about March, 1936, employed as its Field Secretary or Executive Secretary one Dennis Crimmins, who, from 1930 to about the time of his said employment, was business agent and instructor of Local No. 3, and whose duties as such Field or Executive Secretary included advising the organization as to its relations with the Union and acting as an intermediary between the Union and the Association. 632

147. A substantial majority of the electrical contractors of substantial size located in the Borough of Brooklyn in the City of New York, being about 23 in number, were at the time of the trial of this action and had been for several years prior thereto, members of an organization called the "Master Electrical Contractors' Association of Brooklyn", which acted for its members collectively in their relations with Local No. 3 in a manner similar to that of the New York Electrical Contractors' Association. The members of said Master Electrical Contractors' Association of Brooklyn were continuously for several years and at the time of the trial parties to contracts and agreements with Local No. 3 providing for the exclusive employment of members of Local No. 3 in connection with all electrical work. 633

148. The said Master Electrical Contractors' Association of Brooklyn has employed, since about 1934, as its Field Secretary, one Benjamin Kemins, who, at the time he took up his duties as such Field Secretary, was and, for some time thereafter, continued to be a member of the

Executive Board of Local No. 3. His duties included attempting to get as much electrical work as possible for the members of his association.

149. Up to about the latter part of 1938 and for some time prior thereto most of the contractors of substantial size located in the Borough of Queens in the City of New York were members of an organization called the "Long Island Master Electrical Contractors' Association, Inc.", and most of the electrical contractors of substantial size located in the Borough of Bronx in the City of New York were members of an organization called the "North End
635 Electrical Guild, Inc."; which associations acted for their members collectively in their relations with Local No. 3 providing for the exclusive employment of members of Local No. 3 in connection with all electrical work.

150. Since about August, 1936, the said Long Island Master Electrical Contractors' Association employed, as its Field Secretary, one Robert Albrecht, who had been previous thereto Vice-President of Local No. 3 and a member of its Executive Board.

151. The said North End Electrical Guild, Inc. employed, as its Field Secretary, one Francis Flynn, who, prior to such employment, was a member of the Executive Board of Local No. 3. His duties included "cruising
636 around" the Borough of the Bronx attempting to turn any electrical work which was not being done by union electrical contractors over to union electrical contractors.

152. About the latter part of 1938, the said Long Island Master Electrical Contractors' Association, Inc. and the North End Electrical Guild, Inc. merged with the said New York Electrical Contractors' Association under the name of that association.

153. Practically all electrical contractors in the City of New York handling large volumes of work are now members of one of these contractors' associations above mentioned.

154. While the said Dennis Crimmins, Benjamin Kemins, Robert Albrecht and Francis Flynn were acting as field or executive secretaries for the various contractors' associations as aforesaid they were "on leave" from Local No. 3 in that they were in possession of withdrawal cards which entitled them to resume union membership on the termination of their employment. They saw to it that the Electrical contractors in their associations observed all the 638
rules and regulations of Local No. 3 and their agreements with Local No. 3.

155. A large number of the "I" contractors are also organized into various associations known as "The Credit Bureau of Queens County, Inc.", "Brooklyn Electrical Contractors' Association", "Electrical Associates of Garment Center" and "Greater City Electrical Contractors' Association", which associations act for their members collectively in their relations with Local No. 3 in a manner similar to that of the New York Electrical Contractors' Association and who, acting through said associations, are under contracts and agreements with Local No. 3 providing for the exclusive employment of members of Local No. 3 in connection with all electrical work. 639

155-A. Local No. 3 entered into many trade agreements with individual electrical contractors who were not members of any electrical contractors' associations.

Voluntary Code of Fair Competition for Electrical Construction Industry

156. In about September, 1935, the New York Electrical Contractors' Association, the Master Electrical Contractors'

Association of Brooklyn, the Long Island Master Electrical Contractors' Association, the North End Electrical Guild and various union electrical contractors signed an agreement with Local No. 3 providing for a so-called Voluntary Code of Fair Competition for the Electrical Construction Industry, hereinafter referred to as the "Code", and for the administration and enforcement of the provisions of said Code, and said Code was thereafter renewed from year to year, in substantially the same form, up to the latter part of 1939, when it was discontinued after indictments were found against and pleas of guilty thereto were entered by several of the most prominent union electrical
641 contractors, for submitting false bids in connection with collusive bidding on public contracts for electrical construction. During the time said Code was in effect, its provisions were generally observed by the members thereof.

157. The Code provided that it should be binding and apply on all electrical work performed in the territory covered by the jurisdiction of Local No. 3 and that membership in such Code should be restricted to those contractors employing Class "A" members of Local No. 3 exclusively.

158. The said Code was administered by a Code Committee of nine members and a "Director General". The Code Committee was a policing committee for the Code and consisted of four members appointed by the New York
642 Electrical Contractors' Association and one member each appointed by the Master Electrical Contractors' Association of Brooklyn, the Long Island Master Electrical Contractors' Association and the North End Electrical Guild, and two members appointed by Local No. 3. Harry Van Arsdale, Jr. and Hugh Morgan, Business Manager and Assistant Business Manager of Local No. 3 respectively; at all times until about August, 1939, after the pleas of guilty made by the various electrical contractors as herein-

above described, represented Local No. 3 on said Code Committee and participated in the functioning of such Committee.

159. The Director General of said Code having general supervisory power over its operation was at all times one Charles L. Eidlitz, who, previous to his employment in this position, had been an executive of the New York Electrical Contractors' Association.

160. It was compulsory for every electrical contractor employing members of Local No. 3 to be a party to the Code, except in a few instances where such employers were not in competition with the union Class "A" contractors, and every electrical contractor of any importance in New York City became bound by the Code arrangement. 644

161. The said Code provided, among other things, that each employer should file with the Director General a notice of his intention to bid on any electrical job in the Metropolitan Area, public or private, the quoted price of which should exceed $5,000; that each employer should, within twenty-four hours after the submission of bids on all jobs in the Metropolitan Area, public or private, on which the respective prices quoted were $1,000 or more, file true copies of such bids with the Code; that there should be filed with each copy of such bid a breakdown of the price into items of cost showing estimated cost of material, of labor, of job expense, of overhead expense and profit; that after the time of opening of these bids by the purchaser, the Director General should send a tabulation of such bids and of the breakdowns thereof to each bidder; that within four days of the closing of a contract or order, each employer should file with the Code a statement as to the amount of the contract, together with any special conditions relative thereto; that it should be considered unfair 645

practice to discount wage rates or regular quotations on materials; that in bidding on any job each employer should add to the true cost of material, labor and job expense an item of overhead expenses, which should be not less than 35% of the labor cost of the job; that it was recommended that a profit of not less than 6% be added to the total cost of the job, including the overhead; that in the event the Director General should find that a member of the Code has been guilty of a violation of the provisions of the Code he should bring the same before the Code Committee, and that if the Code Committee should find the charges sustained, it had power to censure, assess or suspend the member, and that the fines for violating the rules of conduct
647 laid down by said Code might be up to an amount which would represent 5% of the contract involved.

162. It became the practice of the Code Committee to regard the making of any bid at a figure 10% lower than the average of bids for the contract filed with the Code Committee as "price-cutting" or bidding below cost. Price-cutting was penalized by substantial fines.

162-A. The Voluntary Code was drafted and its organization financed solely by the electrical contractors.

163. Fines have been assessed and collected by the Code Administration from contractors for violations of the Code.

648 164. Class "I" contractors not being permitted to compete with the Class "A" contractors in connection with the type of work to which the Code applied, were not eligible to become members of the Code.

165. The participation by Local No. 3 in the formation and the policing of the Code as aforesaid was one of the means by which Local No. 3 obtained the cooperation and

aid of the union electrical contractors in the boycotting of electrical equipment not manufactured in shops and factories employing members of Local No. 3 or not wired and assembled by members of Local No. 3 as described in these findings.

166. Local Union No. 3 and its agents did not file any complaint, nor is there any evidence that they were instrumental, directly or indirectly, in causing any complaint to be filed with the Voluntary Code for any alleged violation thereof, or participated, directly or indirectly, in enforcing any of the provisions of the Voluntary Code (except as set forth in Finding 158), or that the defendant 650
union ever received any part of the fines imposed upon members of the Voluntary Code found guilty of price cutting or violating any other provision of said Code, or that Local Union No. 3 ever disciplined any electrical contractor for any alleged violation of the Voluntary Code, or caused strikes, stoppage of work, or took any disciplinary action against electrical contractors because of their alleged violation of the Voluntary Code, but, so far as appears, Local Union No. 3 at all times continued its normal relations with, and members of Local Union No. 3 remained in the employ of electrical contractors who were fined by the Voluntary Code for alleged violations thereof, or against whom actions were brought by the Voluntary Code for the collection of said fines.

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167. The defendant union was not shown to have been in any way directly involved in the rigging of bids on City Work, participated in by ten of the electrical contractors, which resulted in their conviction, fine and suspension of sentence.

Local Electrical Manufacturers.

168. In the Metropolitan Area there were at the time of the trial, and at all times herein mentioned have been,

various firms, corporations and individuals, some half-dozen in number, engaged in the manufacture of some of the types of electrical equipment manufactured by the plaintiffs, including electrical panel boards and switchboards, distribution boards, enclosed branch circuit cutouts, enclosed switches, service switches, cutouts, control devices, meter equipment and enclosures.

169. Shortly after he took office as Business Manager, and in the latter part of 1933 and in 1934, Harry Van Arsdale stated his intention to unionize all manufacturers of switchboards, panel boards (small switchboards for the
653 distribution of lighting current) and distribution boards, control boards and enclosed branch circuit cutouts, enclosed switches, service switches, cutouts, control devices, meter equipment and enclosures (all of which are hereafter included in the term "switchboards") in the Metropolitan Area, so that only union labeled equipment of such character would be installed on New York work coming under the jurisdiction of Local No. 3. The defendants, Local Union No. 3 and its officers, including said Harry Van Arsdale, proceeded to enroll the men employed in said factories.

170. Van Arsdale thereupon called on the local manufacturers of switchboards, about six in number, with a view to unionizing them and prevailing on them to sign a contract
654 agreeing to employ only members of Local No. 3 and to pay increased wages. These concerns did business for the most part on a small scale and the falling off in construction work in the Metropolitan Area in the early 1930's had left them in a precarious financial condition. Up to this time these local switchboard manufacturing concerns had sold to local union contractors for electrical construction work in the Metropolitan Area but a small proportion of the total amount of the type of electrical equipment which

said contractors used. The great bulk of the business in such equipment handled by contractors in the Metropolitan Area was being done by the plaintiff companies. These local manufacturers resisted the efforts of the defendants, Local Union No. 3 and its officers, to unionize their plants. The local manufacturers stated to Van Arsdale that for these reasons it would be suicidal for them to unionize and pay the increased wages demanded by Local No. 3. These manufacturers stated that Local No. 3 should undertake to protect them from this outside competition, and Van Arsdale replied that Local No. 3 employees, working for union contractors, might recommend union labelled equipment, and help to that extent. 656

171. As a result of these conversations between Local No. 3's representatives and the principal local manufacturers of switchboards, all these manufacturers were unionized in the year 1934, beginning in March of that year, and granted wage increases to their employees which by the end of the year amounted to over 48%. The rate of pay which had been received by these workers in said plants was much lower than what the union members, engaged in construction work, were receiving. These manufacturers, the factory of one of which was located in Newark, New Jersey, in the jurisdiction of another local of the I.B.E.W., then signed agreements with Local No. 3 for the employment of its members exclusively, and all subsequent agreements between the local fabricators of switchboards and 657
Local No. 3 contained a clause requiring that the manufacturer attach the Local No. 3 label to his products. These agreements entered into between the union and the local companies engaged in the manufacture of electrical equipment and materials were individual agreements entered into in each instance with a particular manufacturer.

172. The organizing and unionizing of the employees of said manufacturers, and the negotiation and consumma-

tion of collective bargaining agreements with said manufacturers was accomplished after a bitter and protracted struggle. The local manufacturers of switchboards aforesaid were forced by the economic power of Local No. 3 to consent to the signing up of all their employees by Local No. 3 and to enter into agreements with Local No. 3 for the employment of its members exclusively as above set forth, as a result of which said manufacturers obtained the exclusive market for their products in the Metropolitan Area and the barring from the Metropolitan Area of all similar products made by others.

659 173. Since 1934, and down to the present date, the defendants, Local Union No. 3 and its officers, have from time to time endeavored to obtain and have at times succeeded in obtaining improved working conditions, including higher wages per hour and shorter hours at the specified hourly rate, for its members engaged in that branch of the industry, and in the course of such efforts have had many disputes with and have conducted strikes against said manufacturers.

174. After the unionization of these manufacturers of switchboards, the union undertook to stop all traffic in switchboards not bearing the union label of Local No. 3 by issuing directions to their membership and representatives which required that no switchboards of the kind manufac-
660 tured by these recently unionized local manufacturers should be installed, unless they bore the union label of Local No. 3, which was issued solely to said local manufacturers.

175. An official bulletin of Local No. 3, dated April 9, 1934, and issued to the members of Local No. 3, contained the following:

> "Look for the union label on all switchboards, distribution boards, control boards, panel boards, en-

closed branch circuit cut-outs, enclosed switches, service switches, cut-outs, and metering equipment. If the union label is not on the equipment when delivered on the job, call union headquarters and report it immediately."

176. An official bulletin, dated June 18, 1934, of Local No. 3 issued to its members, referring to the recent unionization of one of the switchboard manufacturers, contained an order, or direction, to its members, as follows:

"Watch for this label and insist upon it being on all equipment."

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177. The six local switchboard manufacturers unionized by Local No. 3 in 1934 constituted all the principal manufacturers of switchboards in the City of New York, and constituted the entire membership of the Electrical Manufacturers of New York, Inc., an association of switchboard manufacturers located in the City of New York and formed about that time.

178. In the latter part of 1934, said Electrical Manufacturers of New York, Inc., employed Charles Eidlitz (who was then Director-General of the New York Electrical Contractors' Association and in 1935 of the Voluntary Code of Fair Competition, under a salary of $1,000 a month), to act as "impartial chairman" for the Association at a compensation of one per cent. on all sales of switchboards above 663
the price of $500. with a provision for the doubling of such compensation if the base compensation were not paid within two months. Said Eidlitz thus represented the principal union electrical contractors who purchased switchboards, and one of his duties was to furnish monthly figures to the members of the Switchboard Association engaged in manufacturing and selling switchboards as to the switchboard business, and to see that said switchboard

manufacturers did not lose any of this business. In the year 1936, said Eidlitz received $13,000 as such compensation.

179. Under the arrangements and practices pursued by Local No. 3, in connection with switchboards, no switchboard of the kind made by the local union manufacturers in New York City could be installed by members of Local No. 3, unless it bore the Local No. 3 label, without rendering such members liable to disciplinary action, and switchboards made by manufacturers in other states, including manufacturers working under agreement with other local
665 unions of the I.B.E.W., were not permitted to be purchased or installed in connection with buildings in the City of New York where Local No. 3 members were employed.

180. In the latter part of 1934, Frank Adam Company of St. Louis, which operated under an agreement with Local No. 1 of the I.B.E.W. and used the union label of that Local, was denied the right by Local No. 3 of having its switchboard parts made in St. Louis wired and assembled by union factories in New York City, and was informed by Local No. 3 that said parts must be made in New York City, with the result that said Company abandoned all solicitation of business from New York union electrical contractors, except where said contractors were to use the equipment outside of the New York City protected area.

666 181. The above described combination among the defendants, Local No. 3, its officials and representatives, and the local manufacturers of switchboards now operating under agreements with Local No. 3 to bar from the Metropolitan Area switchboards and switchboard parts not manufactured in shops employing members of Local No. 3, has been joined by the union electrical contractors, who both on account of fear of strikes and stoppages of work or

refusal on the part of members of Local No. 3 to install switchboards not bearing the union label of Local No. 3 and on account of their desire to co-operate with Local No. 3 for the reasons hereinbefore set forth, have participated in and at the time of the trial of this action were participating in and have aided and abetted and are aiding and abetting such combination by, among other things, refusing to purchase switchboards not bearing the union label of Local No. 3, even if such switchboards could be purchased for much less, by ceasing to ask for bids on the furnishing of switchboards to be installed by them from switchboard manufacturers and fabricators not working under agreements with Local No. 3 and by specifying in 668
ordering switchboards to be installed by them that such switchboards shall bear the label of Local Union No. 3.

182. By reason of said combination of the defendants and those combining with them as aforesaid to boycott switchboards not bearing the union label of Local No. 3 as aforesaid, and the almost complete curtailment thereby of interstate commerce in such products entering New York City, the interstate commerce and business of those plaintiffs which manufacture switchboards, from their factories to New York City, which formerly represented several hundreds of thousand of dollars annually, has been practically reduced to nothing, and this business has been diverted to the members of the Electrical Manufacturers of New York, Inc. 669

183. In the year 1936, the Westinghouse Electric and Manufacturing Company bid $56,000 to a New York City union electrical contractor for panel boards and switchboards to be used in the Ten Eyck Low Cost Housing Project in the City of New York, and the Company was informed that it could not have the job at any price, because the product did not bear the union label. Said order

was accordingly placed with the Metropolitan Switchboard Company, one of the local union manufacturers, which originally bid $133,000, at a figure of $110,934.

184. The combination of the defendants and those combining with them as aforesaid and the acts in carrying out the purpose of such combination as aforesaid have resulted in, and are resulting in, the creation of a monopoly in the Metropolitan Area for the products manufactured by the local manufacturers of switchboards working under agreements with Local No. 3, which has enabled and does enable, such manufacturers to raise prices materially
671 over the open market prices which had formerly resulted from the competition of similar products from factories in other states, which are no longer permitted to be installed in the Metropolitan Area.

185. Generally speaking, the local union manufacturers are monopolizing the New York City market for the sale of switchboards of the kind which they manufacture, at prices above those which would prevail if the defendants and those combining with them as aforesaid, were not restraining, and had not destroyed, the interstate commerce by means of which the plaintiffs heretofore reached the said New York City market, and by means of which they now desire to supply said market on the basis of free competition.

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186. The defendants also maintain a rule and regulation that all switchboards made by Local No. 3 factories must be disassembled and knocked down in the factory, and delivered to the job in said knocked-down condition, so that the work of wiring and assembling may be repeated by local contractors and their "Class A" employees at the construction job. By preventing the use of all switchboards not built in factories employing "Class E" mem-

bers of Local No. 3, the defendants have forced the use of only such switchboards as have had such duplication of work performed on them by members of Local No. 3 in New York City.

187. By reason of the combination between defendants and others as aforesaid, to boycott switchboards not bearing the label of Local No. 3, since some time in 1934, free competition has not existed in New York City between the sale of switchboards bearing the Local No. 3 label, and switchboards not so labeled, and such switchboards without such labels cannot be sold at any practical price; the plaintiffs, who are manufacturers of switchboards, are no longer invited even to submit bids for the manufacture of switchboards; practically the entire industry of wiring and assembling and building switchboards for use in New York City has since 1934 been transferred from various factories in other states than the state of New York to the local union manufacturers, members of the Electrical Manufacturers of New York, Inc., and the flow of interstate commerce in such switchboards from factories outside of the State of New York to the New York City market has been restrained and destroyed.

Local No. 3's Domination of Electrical Work in New York City

188. Local No. 3, at the time of the trial, was and, for a number of years prior thereto, had been affiliated with and a constituent member of the Building and Construction Trades Council of Greater New York, Long Island and Vicinity, and its predecessor, the Building Trades Council of Greater New York and Long Island and Vicinity, which then was and for years had been affiliated with the Building Trades Department of the American Federation of Labor and was composed of some 112 building trades unions in the City of New York and vicinity such as unions

of plumbers, steamfitters, plasterers, tile layers, etc., represented by 201 business agents and having a total membership of about 200,000 members.

189. At the time of the trial of this action, Harry Van Arsdale, Jr., the Business Manager of Local No. 3, was and for some time had been Vice-President of the said Building and Construction Trades Council.

190. The constitution of said Building and Construction Trades Council of Greater New York, Long Island and Vicinity, and its said predecessor provided, among other things, as follows:

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Section 17 (f) "No affiliated union shall permit their members to work with a non-union man or with members of a dual or hostile body to any industry represented within the Council."

Section 15 "A committee of business agents having men on a job shall be ordered to investigate and shall order a strike, providing a majority of the committee men, having men on job, favor such action."

191. The said Building and Construction Trades Council issued cards to the members of all the unions affiliated with it.

678 192. By this machinery, of which Local No. 3 is a part, strikes of all trades and crafts could be called if any contractor or sub-contractor attempted to employ a single non-union man in any trade or craft on a job where members of unions affiliated with the Building and Construction Trades Council were working, and such sympathetic strikes of all trades could be called even where such non-union men were employed to do the work which union men were forbidden to do. Similar action could be and at times was

taken against any contractor who did not observe union conditions in any part of the country where he did work. Such strikes have been called against general contractors in New York City because of non-union conditions existing in another city.

193. By reason of the restriction on the employment of non-union men and sympathetic strikes and other acts of obstruction against their employment, it has been and, at the time of the trial, was practically impossible to erect a new building or structure in the boroughs of Manhattan, The Bronx or in the central and business parts of Brooklyn, except by the employment of members of unions affiliated with the American Federation of Labor in all trades. All buildings of any substantial size erected in the Metropolitan Area in the last ten years were erected on a closed shop basis, by such American Federation of Labor Union members. 680

194. The Building Trades Employers' Association of the City of New York was organized in 1903 and, at the time of the trial, was composed of about 50 different trade associations of employers in different branches of the building trades, including electrical, plumbing, heating, piping and air conditioning, among them the New York Electrical Contractors' Association, and had a combined membership of about 700 employers. All of the different employers' Associations affiliated with the Building Trades Employers' Association were, at the time of the trial, and for several years prior thereto had been operating on a closed shop basis with the corresponding American Federation of Labor Union of the craft. The structural iron workers, although not members of the Association, operated on the same basis. 681

195. Because of sympathetic strikes and the fear thereof and other practices and working arrangements between

Local No. 3 and said numerous building trades unions and the federations which they have formed, architects, owners or builders in the Metropolitan Area at the time of the trial were afraid and, for over ten years prior thereto, had been afraid to do business in the Metropolitan Area with any contractor, including any electrical contractor, who did not conform to the terms and demands of the American Federation of Labor and the union of his trade, and who was not employing exclusively members of his particular trade union affiliated with the American Federation of Labor, where new construction was involved.

683 196. All contracts for the erection of new buildings of any substantial size by the various departments of the City of New York, amounting annually to millions of dollars, were, at the time of the trial, and, for many years past, had been carried out on such a union basis and to that end said departments included in such contracts the following or a similar provision, sometimes designated as the "men and means" clause:

> "The contractor shall not, without permission of the engineer, employ men or means in connection with this contract, which may cause strikes or other similar troubles by workmen employed by other contractors or persons on any work."

684 197. By reason of the foregoing, an electrical contractor, at the time of the trial and for many years prior thereto, could not do any important electrical work in the Metropolitan Area without employing members of Local No. 3 exclusively.

Class I Workers

198. Down to the latter part of 1937, Local No. 3 did not have the monopoly of alteration, addition, repair,

industrial and small construction work, such as that of small stores and one and two-family houses, which it had established and maintained in connection with new construction work of substantial size, but workers in such spheres were largely non-union and unorganized. At about that time, Harry Van Arsdale, Jr., business manager of Local No. 3, inaugurated a program and campaign of organizing and unionizing employees engaged in all such work, which program was carried out steadily by the means hereinafter described from that time to about the beginning of 1938, when such program was practically completed.

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199. The places of business of electrical contractors not working under agreement with Local No. 3 for the employment of its members exclusively in doing such work were picketed by pickets of Local No. 3 bearing signs to the effect that such contractor was unfair to union labor or unfair to members of Local No. 3. Such picketing was often mass picketing and was often accompanied by violence to employees of such contractors and by damage to the property of such contractors.

200. Retail stores, hotels, restaurants, numerous other types of merchants and shopkeepers, factories and other places of business where an electrical contractor not working under agreement with Local No. 3 for the employment of its members exclusively was doing such electrical work, 687
were picketed by pickets of Local No. 3 bearing signs stating in effect that the said places of business were unfair to union labor or to members of Local No. 3. In some cases, this picketing not only extended to the place of business where the non-union electrical contractor was doing work but to numerous other places of business owned or operated by the same owner and in some cases the picketing continued after the electrical construction work

had been completed. Such picketing was often accompanied by damage to the property of such places of business.

201. Real estate developments where one and two-family homes were being erected and the electrical work therein was being done by contractors not under agreement with Local No. 3 for the employment of its members exclusively were subjected to picketing by Local No. 3 with as many as 100 pickets at a time picketing the development and bearing signs and banners to the general effect that the development was unfair to union labor or to members of
689 Local No. 3. Such picketing was often accompanied by violence and by damage to the property of such developments.

202. Local No. 3 threatened to picket and picketed banks which had loaned money by way of mortgage or otherwise to builders who had employed non-union electrical contractors to do their electrical work. Such pickets bore signs to the general effect that the bank was unfair to union labor or to Local No. 3. In connection with such picketing, Local No. 3 also threatened said banks with labor difficulties from building service employees in connection with buildings owned or operated by said banks.

203. The purpose and effect of these actions was to in-
690 jure the business of those who employed a contractor not under agreement with Local No. 3, to do any electrical work in and about their premises, and to cause them either to cancel their contract with such electrical contractors and have the work completed by a union contractor or to agree to employ only union contractors in the future. Such methods were so effective as a means of boycotting the business of the non-union electrical contractors that in most instances they practically destroyed the entire business of entire groups of large numbers of such contractors.

204. After a bitter and protracted struggle, Local Union No. 3 organized and unionized the electrical workers engaged in this branch of the industry and, thereupon, acting as the collective bargaining agent for said employees, entered into collective bargaining agreements with employers on behalf of said employees, under which said employees received material increases in hourly rates of wages, reduction of hours at such stated rate and improved conditions of employment.

City Contracts

205. Local No. 3 has, in violation of its agreements with union electrical contractors, which provided and for many 692
years had provided that the union agreed not to strike but to negotiate or arbitrate all differences, called strikes against such contractors working on jobs for various departments of the City of New York, which, in recognition of statutory policy had awarded a contract on some other job to a non-union electrical contractor who was the low bidder pursuant to public bidding. These strikes have been settled by the City department involved only by cancelling or refusing to award a contract to the non-union low bidder, and by either readvertising for bids on such contract or awarding such contract to the lowest union bidder, in many cases at great financial loss to the City.

206. In one case involving subway contracts for the Board of Transportation of the City of New York, the cost 693
to the City was about 200% of what it would have been in the absence of union interference and reached an increased cost to the City of nearly $225,000. In this case, which occurred in 1935, all work (except signal installation work) involving about $12,000,000 worth of contracts, was stopped for about two months on the construction of the new New York City Independent Subway by a strike called by Local No. 3, in which the other building trades unions involved in

such construction participated, in accordance with the Constitution of the Building and Construction Trades Council hereinbefore referred to, because contracts for the furnishing and installation of certain signalling equipment in said subway had been awarded to two companies which did not employ members of Local No. 3 for their work but employed members of a bona fide labor union known as the Brotherhood of Railroad Signal Men of America. Because of said strikes, said contracts were modified by the Board of Transportation of the City of New York and the other parties thereto to exclude the work of installing cables and wires in connection with such signal systems,
695 and the contracts for such installations awarded to New York City union electrical contractors at higher and excessive prices.

207. Loss to the City of New York, where Local No. 3 interfered by strikes or threats of strikes to cause the award of public contracts to other than the lowest bidder, also occurred over and above the difference between the lowest bid and the bid of the lowest union bidder (totaling in all hundreds of thousands of dollars) where part of the funds with which a municipal project was to be built were to be furnished by the Federal Public Works Administration, since such awards were conditioned on the award of contracts for the work to the lowest bidder.

696 208. As a result of this warfare by Local No. 3 against City departments who were observing their statutory duty, the various City departments, faced with tremendous cost to uphold the law because of these stoppages, have adopted a practice of refusing to award any contract for electrical work to the lowest bidder if he is a non-union contractor and have inserted in all their contracts provisions to the effect that the contractor shall not have work performed or labor or materials employed in the carrying out of the

contract that would in any way cause or result in a suspension or delay of, or strike upon the work to be performed by any of the trades working about the premises described or work upon the premises of the City of New York, and that any violation of this requirement would be considered cause for declaring the contractor to be in default. One non-union contractor was actually declared in default under this provision, his contract cancelled and awarded to a union contractor.

City Departments

209. One of the purposes and motives of Local Union No. 3 in protesting to the City Departments their awards 698
of contracts, involving electrical construction work, to non-union electrical contractors not employing Local Union No. 3 men, and in calling strikes in furtherance thereof, was to prevent the employment of men not belonging to Local No. 3 and thereby to obtain and enlarge the work opportunities of the construction workers of the union.

210. The "men and means" clauses, above referred to, were inserted in electrical contracts by the various City Departments to avoid heavy losses and serious delays inflicted upon the City by such strikes and resulted in enlarging to that extent the employment opportunities of the construction members of Local Union No. 3.

211. Local Union No. 3, its officers and agents, did not 699
at any time in their activities to obtain employment for their construction members in the various City Departments, specifically order or demand that the City Departments abstain from purchasing electrical equipment or materials manufactured by the plaintiffs or others not employing members of Local Union No. 3, but they compelled the granting of contracts solely to contractors who had agreements with Local No. 3, as hereinbefore described.

212. Local No. 3 did not, at the time of the trial, permit and for years prior thereto had not permitted its members to work on any job for any owner or builder who is having any other electrical work done within the jurisdiction of Local No. 3 by a non-union contractor and has called strikes against union contractors working for a builder who is having other work in the jurisdiction of Local No. 3 performed by a non-union contractor.

213. Local No. 3 has wrested work from other American Federation of Labor union trades by jurisdictional strikes interfering with construction operations.

701 214. Local No. 3 has encouraged disorder and lawlessness on the part of its members in connection with the above activities by guaranteeing them bail and counsel furnished at the expense of the union in case of their arrest and has spent sums for bail and counsel fees for members arrested for disorder and lawlessness in connection with such activities.

215. As a result of these activities set forth in Findings of Fact 188 to 214 inclusive, practically every contractor in the City of New York of the Class "I" type, 241 in number, except 68 Class "I" contractors of substantial size, all members of the Greater City Electrical Contractors Association, Inc., who prior to the beginning of 1938, did not
702 work under agreement with Local No. 3, has been forced and coerced into entering what is known as a "Class I" agreement with Local No. 3, whereby they agreed to employ "Class I" members of Local No. 3 exclusively in connection with all of their electrical work and whereby they agreed not to compete with the "Class A" contractors in new construction work, or in City, State, Federal and Public Utility work and in work involving installations, alterations, additions and repairs in and to occupied buildings

performed in conjunction with other building trade operations, except that they are allowed to work on one- and two-family houses. Fourteen (14) of the 68 "Class I" contractors hereinbefore mentioned in this finding each signed "Class I" agreements with a supplemental agreement attached thereto, which supplemental agreement permitted each of them to engage in either "Class I" or "Class A" work and to employ "Class I" or "Class A" members of the union. The remaining 54 of the 68 "Class I" contractors, hereinbefore mentioned in this finding, entered into collective bargaining agreements with Local No. 3 to confine themselves to one major classification of work, but under which as individual members of the Greater City Electrical 704
Contractors Association, Inc., they could elect upon 90 days notice to Local No. 3 to change their classification from "I" to "A", or vice versa, provided that within said 90 day period they signed a new agreement covering the new classification and surrendered and terminated their agreement on the previous classification.

216. By reason of their activities in obstructing electrical construction work in New York City not carried on by contractors working under closed shop agreements with Local No. 3, the defendants have made it impracticable to carry on electrical construction, repair or alteration work of any substantial size in said City, except as permitted by Local No. 3, and have obtained a practical monopoly of such work for contractors working under agreement with it. 705

217. From all practical viewpoints, the right of union electrical contractors to continue their contracts with Local No. 3 and thus to carry on their business in New York City has for years depended upon the favorable exercise of the power of Local No. 3 toward them. Said contractors accordingly for years past have been and at the time of the trial were in a position where the most powerful of them

are incapable of successfully contesting any issue with the union and have therefore granted substantially every demand which Local No. 3 has made for fear of being involved in business disaster if such demands were refused.

218. Local No. 3, through such activities as are set forth in Findings Nos. 188 to 214 inclusive and 216, has effectively protected all electrical contractors in New York City, doing business with it, from actual and potential competition of electrical contractors not doing business with it.

707 219. Local No. 3 has cooperated with union electrical contractors in New York City, to protect them from competition among themselves, by the adoption and approval and participating, (as set out in findings numbers 158 and 166), in the operation of the Voluntary Code of Fair Competition, by limiting the type of work which may be done by certain groups of union contractors, by limiting to Staten Island the area in New York City within which certain union contractors shall do business and by excluding from doing business in Staten Island certain union contractors and by refusing to admit certain additional contractors within the group where it would result in competition with those already in it.

708 220. One of the purposes of the joint adoption and administration of the Voluntary Code of Fair Competition by Local No. 3 and the union contractors with which it does business was to protect the union contractors and their employees from competition among themselves and from outside competition.

221. There was, at the time of the trial, and, for several years prior thereto, had been an administrative committee of Local No. 3, known as the Contractors' Committee, consisting of the Business Manager of the Union and of ap-

pointees of the Business Manager responsible only to him. This Committee has, for several years, exercised, without restriction or supervision, the sole power of determination as to what contractors shall be granted contracts with the union.

222. The union has written into all contracts with union contractors a clause reading as follows:

> "Any violation of the terms and conditions of this agreement by an individual employer shall be sufficient cause to declare the individual employer not fair to Local Union No. 3 after a hearing by the Local Union Contractors' Committee." 710

223. Said clause as interpreted by Local No. 3 requires that all questions raised by the union as to any alleged violation of contractors' contracts or of any rule, regulation or policy of Local No. 3, even where not covered by the terms of the contract, shall be determined by said Contractors' Committee composed solely of representatives of the union, and said clause applies also to violations of union practices and policies which are so vague and uncertain that the union officials themselves were unable on the witness stand to define them.

224. The rules, regulations and practices imposed by the defendant Local No. 3 through its said Contractors' Committee upon contractors have included the following: 711

Restricting the contractors to the purchase of union-made equipment where available;

Restricting the contractors in their choice of journeyman electricians employed by them by requiring them to obtain said journeymen from union headquarters, and by assigning said journeymen to employment in accordance with their picket activity;

Limiting the amount of time which the contractors may spend at the site of the job;

Forbidding contractors to share business offices with other union contractors;

Requiring contractors to refuse any electrical contract unless they obtain the entire electrical work for the job;

Reserving and exercising the right to cancel the union contract of any contractor who does not obtain a sufficient volume of business to satisfy Local No. 3;

Reserving and exercising the power to refuse to renew such contract with any contractor whose previous
713 contract has been cancelled or expired;

Writing into all contracts the clause above set forth to the effect that any question raised by the union as to a violation of any contract rule, regulation or policy of the union shall be tried by a Contractors' Committee composed exclusively of union officials or representatives.

225. The rules of the defendant union have been of such fundamental importance to the conduct of the business of electrical contractors and, in some cases, so vague and uncertain, the discretion and discrimination exercised by the officials of Local No. 3 in the enforcement of such rules so great, the punishment meted out to contractors falling into disfavor with Local No. 3 so damaging in its effect on their
714 business, the methods of trying a contractor by Local No. 3 for so-called union offenses so unfair and tyrannical, that the defendants exercised and, for many years, have exercised absolute domination and control over the union contractors and created a situation where it has become business suicide for contractors not to cooperate with Local No. 3.

226. Local No. 3 has not hesitated to break and has broken its agreements with contractors and manufacturers and its members working for contractors and manufacturers have struck during the term of its agreements with them, notwithstanding the provisions of all the union's agreements with employers that there will be no strikes against the employer, but that all differences shall be negotiated or arbitrated. No member has been disciplined for any such violation of contract, although such violation, under the Union's rules, has at all times been an offense for which a member is subject to discipline under the constitution of the I.B.E.W. and the By-Laws of Local No. 3.

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227. The protection from competition which Local No. 3 has brought to the union contractors and the injuries which Local No. 3 has inflicted on un-cooperative contractors have been so great that the contractor has been and at the time of the trial was in no position to contest any issue with the union.

Electrical Contractors as a Market for Plaintiffs' Products

228. Electrical contractors in New York City, at the time of the trial, required and for many years past have required for the conduct of their business equipment of the kind or character produced by one or more of the plaintiffs, and by one or more of the local union manufacturers working under agreement with Local No. 3, and also require for the conduct of their business the employment of journeymen electricians, such as members of Local No. 3, in the work of installation.

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229. A majority of all contracts for electrical construction of substantial size in the Metropolitan Area in recent years have required the purchase and installation by the

electrical contractor of most of the following types of equipment: panel boards, switchboards, switches, wire, conduit, switch boxes, outlet boxes, control equipment, motors, low tension telephones, bell and signal system and lighting fixtures, and the annual market for the purchase of such electrical equipment by contractors working under agreement with Local No. 3, was for each of the years 1937 and 1938 about ten million dollars.

230. Electrical equipment which is of a type not made by local union manufacturers is known as "fully bought" equipment, because it is freely purchased and used, regard-
719 less of questions of unionism and non-unionism, and because no union label of Local No. 3 is attached to said type of equipment, and such equipment was freely bought in an open market under competitive conditions by contractors having contracts with the defendant union from the plaintiffs herein, but electrical equipment of a kind manufactured by local union manufacturers working under agreements with Local No. 3 is not bought and sold on a basis of free competition as between union and non-union products, because of the activities of the defendants, combined and acting in concert with local union electrical contractors and local union electrical manufacturers, in barring the use of all such equipment which does not bear the Local No. 3 label as hereinafter described.

720 *Lighting Fixtures*

231. Years ago, in the early development of electric lighting, when construction was simpler and less involved, it was the usual custom to insert the wires in lighting fixtures, as well as to string wires through ducts or tubes between the lighting fixture and switch, which controlled it, on the job.

232. The manufacture of lighting fixtures in quantities running into hundreds for installation in a single building, brought about a situation where the work which the journeymen constituting the defendant union had previously done on the job was being done more economically and efficiently in factories and this resulted in the giving of this work to men employed in these factories, throughout the country, who were not journeymen electricians.

233. For some time prior to 1928, and down to the time of the trial, in accordance with the established custom and practice of the electrical lighting fixture industry in New York City, and for the purpose of obtaining employment, 722
members of Local Union No. 3 fitted, wired and assembled electrical lighting fixtures manufactured by manufacturers employing members of Local Union No. 3, irrespective of whether the fixtures so manufactured were to be installed in New York City or elsewhere.

234. In the late 1920's, the managers of the defendant union who supervised the union men doing the wiring of fixtures, under the direction of Business Agent Jacob Solomon, determined that the union must make a stand to see that work of this kind which its members had originally performed should be done only by members of Local No. 3 and that all the work of wiring and assembling of lighting fixtures for installation in the Metropolitan Area should be done by members of Local Union No. 3. 723

235. From 1927 down to 1937, Local Union No. 3 carried on an extensive campaign to organize and unionize and enrolled as members of the union, fixture hangers, fitters, wirers, assemblers and process workers in shops of various manufacturers and contractors located in New York City and vicinity, who were engaged in the manufacture and installation of lighting fixtures and the parts thereof, and

about 1928 caused to be established a group of about six so-called "Class C" shops in New York City, which would employ "Class C" members of Local No. 3, and do all the work of wiring and assembling lighting fixtures used in New York City. As a result of such organization and unionization campaign, the said manufacturers and contractors entered into collective bargaining agreements with Local Union No. 3, which provided for higher hourly wages and shorter hours at such agreed rate for those employees.

236. This program of establishing "Class C" shops was adopted as a matter of expediency in lieu of a requirement
725 that such fixtures should be wired and assembled by "Class A" members of Local No. 3 at the point of installation, in order that it would not be necessary to require the payment of "Class A" wages for such work, and the representatives of Local No. 3 endeavored to secure acquiescence in such program by pointing to such savings.

237. Since about 1929, there has been affixed to all lighting fixtures wired and assembled in such "Class C" shops the Local No. 3 Union Label.

238. Members of Local No. 3 are, and since in or about 1929 have been, forbidden to hang lighting fixtures which do not bear the label of Local No. 3, and the provision of the By-Laws containing such prohibition reads as follows:

726 "5. *Giving away jurisdiction.* No member is to give away work coming under the jurisdiction of this Local or to allow any other tradesman to do work coming under this Local's jurisdiction without being subject to such penalty as decided upon by the Executive Board."

239. Members of Local No. 3 have been fined by the Executive Board of the Union under the By-Laws of said

Local for installing lighting fixtures which do not bear the Local No. 3 union label.

240. Local No. 3 has also from time to time through its representatives, including the defendant Jacob S. Solomon, threatened strikes on jobs where lighting fixtures, wired and assembled or to be wired and assembled both within and outside the State of New York and not bearing the union label of Local No. 3, have been purchased, and has refused to allow such fixtures to be installed, including one instance where such lighting fixtures not bearing the Local No. 3 label were contracted for by the United States Government for installation in a United States Marine Hos- 728
pital in the Metropolitan Area. In some of these cases Local No. 3 has brought about the cancellation of the orders for such fixtures and in others has brought about an arrangement whereby contrary to the original intention and order, the fixtures were either wired and assembled by members of Local No. 3 after being shipped knocked down from the factories or unwired and disassembled and re-wired and re-assembled by members of Local No. 3 after being shipped from the factories in a completed condition.

241. One of the means by which the supervision, control and enforcement by Local No. 3 of its ban on the installation by its members of lighting fixtures not bearing the union label of Local No. 3 have been effectuated for several
years past has been the requirement contained in the agree- 729
ments between Local No. 3 and the electrical contractors that lighting fixtures cannot be installed except by members of the union especially designated for that purpose by the Business Representative of the union in charge of its so-called lighting fxture division.

242. As further means of supervision, control and enforcement by Local No. 3 of its ban on the installation by

its members of lighting fixtures not bearing the union label of Local No. 3, Local No. 3 for several years past has required that the foreman of the members installing lighting fixtures on a job make daily written reports to the Union Business Representative in charge of its lighting fixture division as to the number of lighting fixtures installed that day and the serial number on each union label on such fixtures.

243. Local No. 3, through its Business Representatives, has from time to time sent letters to union electrical contractors and other potential purchasers of lighting fixtures
731 for installation in the Metropolitan Area, asking them to use union fixtures in order to avoid possible misunderstanding on the job.

244. The employers operating the so-called "Class C" lighting fixture wiring and assembling shops for many years past have participated in and helped to effectuate Local No. 3's control, supervision and enforcement of its ban on the installation by its members in the Metropolitan Area of lighting fixtures not bearing the union label of Local No. 3 by, among other things, reporting to the union all contracts closed with respect to lighting fixtures to be furnished or wired and assembled by them.

245. The above described combination among the de-
732 fendants, Local No. 3, its officials and representatives, has also been joined by the union electrical contractors, who, both on account of fear of strikes and stoppages of work or refusal on the part of members of Local No. 3 to install lighting fixtures which have not been wired and assembled in shops employing members of Local No. 3 exclusively, and on account of their desire to co-operate with Local No. 3 for the reasons hereinbefore set forth, have participated in and at the time of the trial continued participat-

ing in aiding and abetting such combination by, among other things, refusing to purchase lighting fixtures not to be wired and assembled in Local No. 3 shops, even if such lighting fixtures could be purchased for much less than if wired and assembled in Local No. 3 shops, and by refraining from asking for quotations on lighting fixtures which have not been or are not to be wired and assembled in Local No. 3 shops, and by specifying that lighting fixtures they order shall be wired and assembled by members of Local No. 3 and bear the union label of Local No. 3 and, in some cases, by cancelling orders for lighting fixtures when they learned that such fixtures were not to be wired and assembled by members of Local No. 3. 734

246. Since about 1930, defendants, through their boycott of lighting fixtures which do not bear the Local No. 3 label, have been successful in excluding from use in buildings in the New York market practically all lighting fixtures which are not wired and assembled in "Class C" shops, and which do not bear the Local No. 3 label, and this exclusion includes lighting fixtures made by factories in other states working under agreements with other local unions of the International Brotherhood of Electrical Workers, and bearing the union label of said other local unions.

247. Since about 1930, the plaintiff Westinghouse Electric and Manufacturing Company, which maintains a large 735
plant in Cleveland, Ohio, for the manufacture of lighting fixtures, and which formerly shipped its completed fixtures into New York City, has, by reason of the boycott of the defendants, been obliged to ship fixture parts to New York City for assembling and wiring in "Class C" shops, while at the same time they continued to sell and ship the completed product at lower prices for the completely assembled and wired fixtures, to other markets where such restrictions do not prevail.

248. By reason of this combination and conspiracy as to lighting fixtures, the said plaintiff Westinghouse Electric & Manufacturing Company has lost, and is losing, the business of wiring and assembling lighting fixtures for use in New York City and the profits therefrom, by the transfer of this work from its factories to members of Local No. 3 in New York City.

249. The General Electric Supply Company, which customarily bought lighting fixtures from various manufacturers in different states for sale by it in the New York City market, has since about 1930 and on account of said
737 boycott, been obliged to buy lighting fixtures from said manufacturers, only on condition that they be assembled and wired in "Class C" shops in New York City.

250. Other manufacturers of lighting fixtures, located in states outside of the State of New York, including manufacturers unionized by the I.B.E.W., have been denied access to the New York City market because of the said conspiracy except upon the condition that they have their lighting fixtures assembled and wired by "Class C" members of Local No. 3 in the "Class C" shops in New York City.

251. The cost of wiring and assembling lighting fixtures in the "Class C" shops in New York City is from four to
738 eight times as great as the cost for like work in the factories of the Westinghouse Electric and Manufacturing Company in Cleveland.

252. Local No. 3, in its efforts to make additional work for its members, in connection with lighting fixtures, has from time to time forbidden the use of labor-saving devices, such as cleated sockets (sockets for light bulbs), where the main wires from electrical outlets in a building

could be directly connected to the binding posts, and has insisted that where such equipment is used that short pieces of wire, commonly known as pigtails, should be first attached to the cleated socket; and then joined to the longer wires through scraping, splicing, soldering and taping, thus creating extra and unnecessary work at an extra cost of about 40¢ a socket.

253. In its further efforts to make work for its members in connection with the lighting fixture business, Local No. 3 has refused to permit fixtures to be wired and assembled in "Class C" shops, so as to be used in the New York market, unless the manufacturer or supplier in question 740
also agreed that it would so have wired and assembled all lighting fixtures which it proposed to sell for use and installation in other and unprotected and uncontrolled markets in the Metropolitan Area and elsewhere, and manufacturers in other states have been denied the privilege of having their fixture parts wired and assembled in "Class C" shops, unless they would consent to have all of their lighting fixtures sold in or through New York City so wired and assembled, even though they were destined for installation in cities, and in buildings erected by others than members of Local No. 3.

254. The defendants, Local Union No. 3, its officers, agents and employees, did not refuse to handle or install certain electrical lighting fixtures like flood lights and 741
other similar electrical lighting equipment, manufactured by the plaintiffs or other companies not in contractual relationship with Local Union No. 3, which were not capable of being locally rewired, as a practical matter, and its members installed such electrical lighting fixtures, flood lights and other electrical lighting equipment manufactured by plaintiffs and other manufacturing plants which did not employ members of Local Union No. 3, without

regard as to whether said lighting fixtures, flood lights or lighting equipment were manufactured by the plaintiffs or other out of town manufacturers, even though they did not bear the Local Union No. 3 label.

255. The defendants, Local Union No. 3 and its officers, had as one of their purposes in insisting upon such wiring by its members in New York City the organization and unionization of the lighting fixture branch of the electrical industry within the City of New York and vicinity, regardless of the economic loss involved in the transaction and the improvement of the working conditions of its members
743 engaged therein, particularly higher wages per hour and shorter hours of work at such specified rates.

256. At all times, one of the primary motives and purposes of the defendants, Local Union No. 3 and its officers, in their activities in said lighting fixture branch of the industry, was to make, obtain, secure, maintain, preserve and defend work opportunities for its members, all for the protection of their self-interest, regardless of the interests of union members in outside factories or of increased costs to New York builders and the public.

257. By reason of the defendants' combination in respect to lighting fixtures, which has been joined by and has been and is being participated in by the union electrical
744 contractors and the owners of the various "Class C" wiring shops as aforesaid, free competition no longer exists in New York City between lighting fixtures bearing the Local No. 3 label, and lighting fixtures assembled and wired by others than members of Local No. 3, and the entire industry of wiring and assembling lighting fixtures, for use by union contractors in New York City, has been transferred from various factories in other states than the State of New York to the "Class C" shops of Local

No. 3 in New York City, and the flow of interstate commerce in wired and assembled lighting fixtures from these factories outside the State of New York to the New York City market has been restrained and destroyed.

Extension of Unionization to Shops Fabricating Other Electrical Equipment

258. Down to 1933, Local No. 3 claimed jurisdiction over only the work of electrical construction in New York City, which was performed by "Class A" members, of which there were about 7,000 in number, and the work of wiring and assembling lighting fixtures, which since 1929 had been performed by "Class C" members of Local No. 3 in a 746
small number of factories in New York City working under agreement with Local No. 3.

259. In October, 1933, Harry Van Arsdale, Jr., became Business Manager of Local No. 3, and resolved to extend the jurisdiction of that union to include all kinds of manufacturing and fabrication work on electrical equipment to be used in New York City, so as to control all work done in connection with such electrical equipment to the same extent that it already had been controlling the work of wiring and assembling lighting fixtures used in New York City.

Purchase Clause in Contractors' Agreements

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260. In 1934, the New York Electrical Contractors' Association and Local No. 3 included in their agreement a clause concerning the purchase of equipment which read as follows:

> "It is agreed that all electrical equipment and materials shall be purchased and handled by the electrical contractor and be installed by members of Local Union No. 3. Any deviation from this method of procedure is a violation of this agreement."

Said clause has ever since been included in all agreements entered into between Local No. 3 and electrical contractors in the City of New York, and by its terms places in the New York union electrical contractors the exclusive control of the purchase of all equipment to be installed by them.

261. The purpose of said clause on the part of the union was to see that union members should not work for contractors who did not purchase their own material, and to see that the union restrictions on the use of electrical equipment were observed. The advantage of said clause, to the contractor, was that it secured for the contractor a commission on the purchase of said equipment, plus the usual
749 six per cent. overall profit on the total value of the contract as later provided by the Code and the purpose of writing said clause into all agreements between Local No. 3 and electrical contractors was to secure its observance through threats of strike and actually through strikes if necessary.

262. As a result of this clause and its observance in connection with some of the electrical construction work in New York City performed by members of Local No. 3 the market for much of plaintiffs' electrical materials and equipment has been and is restricted to union electrical contract[illegible] for the reason that owners, builders, architects, engineers, general contractors and others are thereby
750 prevented from purchasing the electrical equipment and materials to be installed for them by union electrical contractors but such purchasing must be done by the electrical contractor.

Switches

263. Various manufacturers of switchboards unionized in 1934 were also manufacturers of switches and there are also located and for several years past have been located

in the City of New York, several manufacturers of large switches working under agreement with Local No. 3 and attaching the Local No. 3 label to their products. The boycott by Local No. 3 participated in by others as aforesaid, of switchboards, extended also to the large switches, such as safety switches and knife switches, produced by such union manufacturers, but does not extend to toggle switches, which are not produced by such union manufacturers.

264. Such boycott of knife and safety switches resulted in an effective exclusion from electrical installation work done by union electrical contractors employing members of Local No. 3 in the Metropolitan Area of such products as did not bear the union label of Local No. 3. 752

265. The boycott of switches has resulted in restraining interstate trade and commerce as between plaintiffs, who are producers of such switches, and union contractors in New York City, who purchase switches in the ordinary course of business, and has practically ended all competition as between the sale of such switches, made by local union manufacturers, and the sale of such switches, made by the plaintiffs, in all cases where said switches are to be installed in buildings in New York City by union electrical contractors or upon switchboards so to be used.

266. Commercial Control & Device Corporation, a local union manufacturer of switches, when listing and selling switches for use in New York City on union jobs charges substantially more for said switches with the union label of Local No. 3 than it does for said switches to be sold by it without the union label in other than the protected markets, although all of such switches are manufactured in the same shop by the same employees, all members of Local No. 3. 753

Control Equipment

267. Control apparatus is a kind of electrical equipment, frequently automatic, to distribute and control the application of electrical current to motors from the main distribution lines. While control apparatus is frequently mounted on panel boards, it is to be distinguished as a whole from the term "switchboards" or "panel boards", such as power switchboards, which receive and distribute the main supply of electricity in the building, and lighting panel boards, which distribute the current to lighting fixtures.

755 268. In the last decade, the technical and scientific development and improvement of control apparatus has progressed rapidly. To meet the necessity for automatic and interrelated control of motors operating new and more complicated kinds of plumbing, air conditioning, elevator, lift bridge, heating, sprinkler and other kinds of systems, automatic motor control units of great complexity are being built in the factories through the aid of expert technicians, where the equipment is especially designed to perform the particular functions for which it is required and is and must be assembled and subject to final test before shipment.

269. Where, prior to this development of complicated automatic control apparatus, motor control consisted large-
756 ly of comparatively simple switches, connecting the current outlet with the motor, which were installed by the journeymen on the job either separately in various places in a structure or in comparatively small groups on a slab or board, after such development of automatic controls, the building, wiring and assembling of large boards, on which were mounted and interconnected (and usually interrelated) motor control equipment, became a factory job.

270. Control apparatus can be wired and assembled more efficiently, accurately and economically in the factory where it is built than at the job where it is to be installed.

271. Control apparatus, except in a very limited way, is not, and has not been, manufactured by any New York factory working under agreement with Local No. 3, or in any factory located in New York City, and in 1934 and 1935 practically no control equipment was manufactured in any factory in New York City.

272. In 1934, and in furtherance of the objectives established by Harry Van Arsdale as Business Manager, Local No. 3 and its representatives decided to bring within the 758
jurisdiction of Local No. 3 all additional work on which a claim could be placed, including the electrical work of wiring and assembling control apparatus, in the same way that there had been created and maintained for Local No. 3 a monopoly of the assembling and wiring of lighting fixtures for installation on jobs done by union electrical contractors.

273. Prior to 1934, there was no agreement or understanding or practice, in connection with electrical installation operations in New York City carried on by the employment of members of Local No. 3, to the effect that control equipment or switchboards should be wired and assembled at the job site by members of Local No. 3, and 759
prior to that time switchboards and control boards, in the great majority of cases, came to the job wired and with current-carrying parts attached where practicable and were installed by members of Local No. 3 as received.

274. Since there did not exist within the territorial jurisdiction of Local No. 3 any factory capable of producing control apparatus to any extent so that the members of Local No. 3 might obtain said work by being employed in

said factory, Local No. 3 decided to require that the work of assembling and wiring control equipment should be performed by its "Class A" installation men at the job in New York City, where said equipment was to be used, and thus to bring about a transfer of the industry of wiring and assembling control apparatus from the factories throughout the country, including the factories of the plaintiffs, where it had customarily theretofore been done, to the place of installation, New York City, where the members of Local No. 3 would do said work as employees of the electrical contractor carrying on the work of installation.

761 275. In the latter part of 1933 and in 1934, certain units of Rockefeller Center, New York City, including a building of seventy stories, where 2,000 building craftsmen, and 20 or 30 electricians were engaged at work, were in the course of construction, and offered a favorable opportunity for enforcing the policy which Local No. 3 had decided to enforce, as to the wiring and assembling of control apparatus.

276. Electrical control boards of tremendous size and complexity were required, to meet all of the varied uses to which electrical power was to be put in the operation of these Rockefeller Center buildings.

277. Early in 1934, Local No. 3 protested to the contractors the use of control equipment at the Rockefeller
762 Center Buildings, unless it was wired and assembled by their members, employed by the union electrical contractor on the job.

278. On September 28, 1934, John Lowry & Co., the general building contractor for the Rockefeller Center job, advised the air-conditioning contractor, the heating contractor and plumbing contractor on such job, each of whom had occasion to purchase control boards and equipment in

connection with their contracts for said building, in writing, as a result of a telephone conversation with J. Livingston & Co., the union electrical contractor on this job, in substance, that in every case the board should be manufactured in shops employing labor which will involve no controversy with the electricians employed by the electrical contractor to make the electrical connections.

279. In compliance with its contracts with various ventilating, plumbing and air conditioning contractors to furnish for some of the buildings in this project control boards completely wired, assembled and tested in the factories, the plaintiff, Clark Controller Company, shipped to the job 764
site control boards which had been completely wired, assembled and interconnected and tested for performance in its factory and which were ready to be set in place and for connection to the various feed lines to the apparatus and to the various distribution points from the apparatus.

280. After the arrival of these control boards of the plaintiff, Clark Controller Company, at the job site, the representatives of Local No. 3 demanded that all the work of assembling, erecting and wiring, including the placing of bus bars and affixing the current carrying parts, in connection with the installation of these types of units should be done on the job sites by members of Local No. 3. A strike of members of Local No. 3, working on this project was threatened unless such demands of Local No. 3 for such 765
work were met.

281. At the instance of the Heating, Piping and Air Conditioning Contractors Association, among whose members were contractors who had purchased this equipment for installation in this project, meetings were called and held under the auspices of the Building Trades Employers Association, a recognized agency for dealing with labor difficulties in the building industry, to consider the problem.

282. Such meetings were attended by representatives of those parties concerned, including representatives of Local No. 3, of the New York Electrical Contractors Association, of the Association of Contracting Plumbers of the City of New York, of the Heating, Piping and Air Conditioning Contractors New York City Association and of the Sprinkler Contractors. Manufacturers of electrical equipment of the type involved in the controversy were invited to attend and representatives of the following plaintiffs were present, i. e., Clark Controller Company, Cutler-Hammer, Inc., General Electric Company, Monitor Controller Company and Westinghouse Electric & Manufacturing Com-
767 pany. The representatives of the manufacturers stated that their responsibility for the apparatus depended upon tests of it made by them at the factory after it had been wired and they could not be sure of results if the work contended for by Local No. 3 was done on the job site, and that it was necessary that the apparatus be factory tested in order to secure a certificate of approval of the Underwriters Laboratories; that they would try to please their customers but did not recognize the claims of Local No. 3 as raised in this controversy. Van Arsdale, who was present as one of the representatives of Local No. 3, asserted that this position of the manufacturers did not change the situation and asked that they be excused from the meeting, and thereupon the manufacturers were excluded from fur-
768 ther consideration of the problem.

283. It did not concern Local No. 3 or its officers and representatives that all this work of wiring and assembling control apparatus had to be done previously at the factory in order to test the apparatus and demonstrate that it was working properly, and that, after such tests, additional unnecessary work at the factory was required to disassemble the apparatus and ship the current-carrying parts separately to meet the demands of Local No. 3 and that

this unnecessary extra work at the factory and the unnecessary work of re-wiring and re-assembling the equipment on the job to meet the demands of Local No. 3 is uneconomical and adds large unnecessary expense to the cost of furnishing and installing such equipment.

284. It was profitable to the union electrical contractors to have the demands of Local No. 3 for the work of wiring and assembling control equipment at the job site met, as all union electrical contractors were to be similarly bound by such requirements and the extra and unnecessary cost of having this work redone at the job site as part of the electrical contract was passed on to the customer and later, under the Voluntary Code, formed an additional item of labor expense upon which an overhead charge of 35% and a profit of 6% was required to be computed. 770

285. On March 23, 1935, representatives of Local No. 3 and of the New York Electrical Contractors' Association met and agreed that they both would take a position at the meetings regarding the demands of Local No. 3 for the work of wiring and assembling of control equipment at the job site as follows:

"That this equipment shall be received on the job as follows:

Metal frame work fabricated knocked down. All individual panels, units and sections be delivered knocked down and erected at the site; such panels to have mounted thereon switches, circuit breakers, instruments, etc. 771

Bus work may be prefabricated by the manufacturer but must be shipped knocked down and assembled by members of the Union on the job.

All control and instrument wiring including interconnections between equipment on panels and rear or

remote mounted devices to be done by the Union electrician in the field."

286. On March 29, 1935, and as a result of various meetings between the representatives of the signatories thereto, a memorandum of agreement (Ex. 9) was entered into, reading as follows:

"Memorandum of conference and understanding between the Electrical Contractors Association, Association of Contracting Plumbers of the City of New York, Heating, Piping and Air Conditioning Contractors New York City Association, Inc. and Sprinkler Con-
773 tractors, and Electrical Workers, Local #3, as to equipment to be supplied by the above-named contractors.

It was agreed that:

Skeleton frames for control boards may be shipped knocked down or as a unit but shall be erected by the electrical contractor for the job.

All panels may be shipped with the instruments mounted thereon. If instruments are shipped separately they shall be mounted on the panel by the electrical contractor for the job.

All panels shall be mounted on the frames by the electrical contractor for the job.

All wiring and current carrying parts, including
774 finished bus bars and copper connections, even though the latter come to the job bent to fit by the manufacturer, shall be assembled by the electrical contractor for the job.

All individual starter or control units up to and including 5 H.P. may be shipped to the job wired complete, ready for installation by the electrical contractor for the job.

Self-contained pump equipment may be furnished and delivered by the manufacturer to the job with

motor, starter and complete wiring connections between starter and motor up to and including 3 H.P. On all such equipment larger than 3 H.P., all wiring between the main line switch and the motor shall be furnished and installed by the electrical contractor for the job.

It is further understood that the conditions embodied in this understanding shall apply to all jobs estimated for after April 8, 1935.

ELECTRICAL CONTRACTORS' ASSN.
By (signed) JOHN L. FLAGG, President

HEATING, PIPING AND AIR CONDITIONING CONTRACTORS N. Y. C. ASSN., INC. and SPRINKLER 776
CONTRACTORS
By (signed) E. W. VERITY, President

ASSOCIATION OF CONTRACTING PLUMBERS OF THE CITY OF NEW YORK
By (signed) MORRIS JARCHO, President

ELECTRICAL WORKERS, LOCAL #3
By (signed) HOWARD MCSPEDON."

287. The agreement—Exhibit 9—was immediately circulated to all the members of the Building Trades Employers' Association, in its various crafts, and thereupon became the prevailing rule and practice throughout the entire industry.

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288. The agreement and arrangement, Exhibit 9, was approved by the membership of Local No. 3 at a regular meeting thereof.

289. The provisions of said agreement—Exhibit 9—have been, in general, uniformly carried out, in connection with the performance of all contracts for electrical work by the employment of members of Local No. 3, except

where Local No. 3 grants exemptions therefrom, or modifications thereof.

290. The result of the compliance with and performance of the terms of Exhibit 9 has been to require the wiring and assembling of control equipment from the various factories throughout the country, including the plaintiffs', by the local union contractors, and their employees, members of Local No. 3 in New York City.

291. As, in general, control equipment has to be assembled and wired in the factory for the purpose of factory tests, compliance with the restrictions of the agree-
779 ment and arrangement—Exhibit 9—is effected either by unwiring and disassembling the equipment in the factory and sending it to the job in a knocked-down condition, or by sending it to the job completely wired and assembled, and having it disassembled and unwired and then reassembled and rewired on the job, but, in either case, giving the contractor and the union electricians employed by the contractor on the job, the duplicating work of rewiring and reassembling the equipment on the job, after such unnecessary unwiring and disassembling.

292. The cost of wiring and assembling control equipment on the job is ordinarily about three times the cost of wiring and assembling control equipment in the factory.

780 293. The extra cost of rewiring and reassembling equipment on the job because of the agreement and arrangement contained in Exhibit 9, in the case of a large contract of the General Electric Co. to furnish control equipment for the Ward's Island Sewage Disposal Plant, amounted to about $17,500, and in the case of the Triborough Bridge job in 1935, where, solely because of the demands of Local No. 3, new wire and copper connections were cut to fit on the job, discarding the original current-carrying material

as junk, amounted to about $5,800.00. Both of these were public projects, paid for by the City of New York.

294. In many cases where control equipment has come to the job without the label of Local No. 3 and fully wired and assembled in the factory, officials and representatives of Local No. 3 have pointed out to the electrical contractor or to the general contractor or plumbing, heating or air conditioning contractor for whom the electrical contractor might have been installing the equipment, that the equipment was in violation of the agreement and arrangement Exhibit 9, and have stated that such equipment would not be installed until rewired and reassembled by the members of Local No. 3 on the job. In such cases the equipment has been unwired and disassembled and rewired and reassembled by members of Local No. 3 on the job for no other reason than to enforce the agreement and arrangement, Exhibit 9. In many of such cases the electrical contractor, in billing his customer for this extra and unnecessary work, has added to the bill for the work, 35% overhead and various percentages for profit in compliance with the Voluntary Code. 782

295. In other cases, New York City union electrical contractors, solely to meet the requirements of the agreement and arrangement, Exhibit 9, in ordering control equipment from the plaintiffs have specified that after it is assembled and wired at the factory for testing, it be there unwired and disassembled and sent to the job in a knocked-down condition. 783

296. The ultimate effect of the operation and carrying out of this agreement, Exhibit 9, is unnecessarily and materially to increase the cost of such control equipment to owners, builders, municipal and governmental agencies and others having such equipment installed in the Metro-

politan Area. Such unnecessarily increased cost is passed on through the contractor and builder to the general public indirectly and, in the case of public work, directly.

297. The purpose of the defendants, in respect to said control apparatus, is to bar apparatus wired and assembled in the factory by others than members of Local No. 3, which means particularly factories outside of the State of New York, and to require said work to be done by the contractors employing union men at the job, in order that local union contractors and the members of Local No. 3 working for said union contractors at the job, may secure said work and the profits therefrom.

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298. In those comparatively few cases where similar control apparatus can be manufactured in shops in the Metropolitan Area employing members of Local No. 3, the requirements of Local No. 3, as generally carried out in such cases, do not call for the refabrication on the job of such boards manufactured in factories employing members of Local No. 3 but do require that such equipment be furnished with the label of Local No. 3, if obtainable.

299. Under the arrangement and agreement, Exhibit 9, as enforced by Local No. 3, electrical control equipment even though wired and assembled in factories outside the Metropolitan Area by members of other Local Unions of
786 the I. B. E. W. employed in such factories is required to be rewired and reassembled on the job by members of Local No. 3 before they will install it.

300. The purpose and objective of the combination of the defendant, Local No. 3, its officers and representatives and the New York City union electrical contractors in bringing about and enforcing and carrying out the agreement and arrangement contained in Exhibit 9, was and is, not to bring about the unionization of the employees in

any of the plaintiffs factories or any change or improvement in their working conditions but solely to secure and maintain for the members of Local No. 3 and the union electrical contractors and in some cases local union manufacturers, a monopoly in the Metropolitan Area of the work of wiring and assembling electrical control equipment; and a monopoly of such work in the Metropolitan Area has thereby been secured for and has been and is being maintained for and by members of Local No. 3, the New York City union electrical contractors and, in some cases, local union manufacturers.

301. In so far as those plaintiffs manufacturing control equipment might be able in some instances to fabricate and ship such equipment without first wiring and assembling it, they have lost work involved in this branch of the business, and the profits therefrom, by the transfer of this work from the factories to members of Local No. 3 at the job site. 788

302. By the agreement and arrangement, Exhibit 9, as brought about and enforced and maintained by Local No. 3 and the union electrical contractors, interstate commerce as to electrical control equipment of the types which can be manufactured by the local union manufacturers has been and is restrained by the exclusion from the market in the Metropolitan Area of such equipment not manufactured by the local union manufacturers and as to types of control equipment which cannot be manufactured by the local union manufacturers, interstate commerce has been and is being unduly burdened by the requirements that such equipment be rewired and reassembled by members of Local Union No. 3 working at the job site, all to the injury of such of the plaintiffs as manufacture control apparatus and to the injury of the public generally in the Metropolitan Area. 789

303. As to types of switchboards which the local union manufacturers are not equipped to and do not make, interstate commerce in such switchboards has been and, at the time of the trial, was unduly burdened by this combination and conspiracy among the defendants, the members, officers and agents of Local No. 3 and the union electrical contractors in enforcing a requirement that such switchboards, where the same have been previously assembled and wired at the factory, must be disassembled and unwired and delivered to the job in a knocked down condition and the work of wiring and assembling such boards performed by members of Local No. 3 at the job site.

791 304. There is a clause in the standard fire insurance policies which permits the use of electrical equipment approved and listed by Underwriters Laboratories, Inc., but which classes as substandard, unsafe and defective all equipment not so approved, or listed, and which calls for a higher rate of premium for fire insurance on buildings where electrical equipment is not approved or listed.

305. The approval of the Underwriters Laboratories, Inc., is based upon inspection at the factory, and does not extend to equipment rebuilt on the job.

306. Equipment such as switchboards, control apparatus and lighting fixtures, which are rewired and reassem-
792 bled on the job, or elsewhere than in the factory where manufactured, are not entitled to listing or approval by the Underwriters Laboratories, Inc., and where such equipment is rewired and reassembled on the job or elsewhere than in the factory where manufactured, if such fact were known to Underwriters Laboratories, Inc., or to the Fire Insurance Underwriters, a higher rate of insurance premium would be charged.

307. In the event that equipment bearing the listing or approval of the Underwriters Laboratories, Inc. is rewired and assembled on the job and thereafter is no longer entitled to such listing and approval and the company underwriting such risk is unaware of such rewiring and assembling on the job which vitiates such listing or approval, a situation is created which might enable the underwriting company to disclaim liability.

Signalling Apparatus

308. In the early part of 1936, Local No. 3 undertook to extend its jurisdiction to the manufacture and production of low tension signalling equipment, including bells, 794
buzzers, sirens, annunciators, house and office telephones, to be used in buildings in New York City, which business, at that time, was largely done by four manufacturers, including Edwards & Co., none of which at the time was operating under an agreement with Local No. 3.

309. In 1936, Local No. 3, carried on an extensive campaign to organize and unionize, and succeeded in enrolling, as members of the union, the employees of various such manufacturers located in New York City and vicinity, who were engaged in the manufacture of such low tension signalling equipment.

310. In June, 1936, Local No. 3 was successful in bringing about the unionization of the principal manufacturers 795
of signalling equipment in New York City, except Edwards & Co., and the said manufacturers individually entered into collective bargaining agreements with Local No. 3, which provided for a material improvement in working conditions for those employees, including higher hourly wages and shorter hours at the prescribed rate, and which also provided for the attachment of the Local No. 3 union label to the product of said manufacturers so unionizing.

311. In July, 1936, shortly after said manufacturers of low tension signalling equipment, other than Edwards & Co., made such agreements, some 15 or 20 union contractors, members of the New York Contractors' Association, met with Edwards & Co., which had refused to unionize, and informed said manufacturer that they would not carry out the contracts which they had placed with Edwards & Co., for the purchase of signalling equipment, because said equipment would not bear the union label, notwithstanding the fact that the orders for said equipment had been placed prior to a time when there was any such equipment on the market bearing the label of Local No. 3. When Edwards
797 & Co. refused to permit the cancellation of said contracts, arrangements were worked out between the contractors in question, and the union, whereby said contractors were permitted to use the unlabeled equipment because it was so ordered from Edwards & Co. before there was any such labeled equipment on the market.

312. In April, 1937, Edwards & Co. removed its manufacturing operations to Norwalk, Connecticut, where it has operated under an agreement with a local of the I.B.E.W. in that locality since July, 1937. Since then, by reason of the Local No. 3 boycott, Edwards & Co. still was unable to obtain orders from its customers of long standing in New York City for signalling equipment, to be used in New York City.
798

313. In some instances, union contractors have ordered signalling equipment from non-union manufacturers, upon the understanding that by ways and means not known to the union contractor, the non-union manufacturer would secure the attachment of the Local No. 3 label to his non-union equipment, so that it would be accepted by Local No. 3 in connection with installation work.

314. Interstate commerce is, and since 1936 has been restrained and prevented as between manufacturers of signalling equipment, outside of the State of New York, and buyers of signalling equipment to be used in the City of New York, and competition between the sale of signalling equipment made by New York manufacturers with the union label of Local No. 3 and all other signalling equipment has been practically prevented and destroyed, except where it may exist under special circumstances, by reason of special exemptions, or dispensations, granted by Local No. 3.

Wire and Cable

315. In the early part of 1936, Local No. 3 undertook 800
to unionize New York City manufacturers of wire and cable as well as the Anaconda Co. and the Phelps Dodge Copper Co., Habirshaw Division, both in the vicinity of New York City and informed one of said manufacturers, The Bishop Wire & Cable Corporation, that if it did not unionize, the local union contractors would not handle wire produced by it.

316. In 1936, 1937 and 1938, Local No. 3, carried on a campaign to organize and unionize, and succeeded in enrolling as members of the union, the employees of various manufacturers located in New York City and vicinity including the aforesaid Bishop Wire & Cable Corporation who were engaged in the manufacture of wire and cable. 801

317. In 1936, 1937 and 1938, several New York City manufacturers of wire and cable were unionized and individually entered into collective bargaining agreements with Local Union No. 3, which provided for a material improvement of the working conditions for those employees, including higher wages per hour and shorter hours for such rate of wages and further provided that they were authorized at their election to attach the label of Local No. 3 to their product.

318. None of the defendants specifically represented to said manufacturers, or any of them, that plaintiffs' products would be boycotted, as a consideration for their entering into an agreement, but some of the defendants represented that members of the union would handle wire with the union label and that wire without the union label might not be so handled.

319. Commencing in the year 1936, it has been difficult for such of the plaintiffs as manufacture wire and cable to sell wire and cable for use in New York City, because of the fear on the part of contractors and purchasers that
803. if they bought or attempted to use wire or cable without the union label of Local No. 3, they would encounter labor difficulties from Local No. 3, in its attempted installation.

320. As a result of the fear on the part of contractors and other purchasers of action by Local No. 3 that would cause labor troubles and loss of economic advantages dependent on Local No. 3 if they purchased wire or cable without the label of Local No. 3 to be used in New York City, plaintiffs have been prevented from securing many contracts which they otherwise would have secured for such wire and cable, and have received cancellations of orders which have been placed with them for such wire and cable, and interstate competition in the sale of wire and cable made by plaintiffs, and not bearing the label of Local No. 3,
804 and wire and cable bearing said label, for use in New York City, has been restrained and prevented.

Boxes and Miscellaneous Electrical Equipment

321. Various local manufacturers in New York City, producing metal boxes to contain electrical equipment installed in buildings and structures, have been unionized by Local No. 3, and are thereby permitted to attach the label of Local No. 3 to their products.

322. By reason of the combination herein described, electrical contractors employing members of Local No. 3 in New York City purchase for use in New York City only such electrical boxes as bear the Local No. 3 label, except as otherwise stated in Findings 330, 331 and 332.

323. Local No. 3 requires that all hangers for pipes containing electrical wires shall either be made in Local union factories employing members of Local No. 3, or shall be made on the job by members of Local No. 3 employed by union contractors and has boycotted as articles of commerce hangers made in factories by others than members of Local No. 3. 806

Neon Signs, Electrodes, Luminous Transformers and Flashers

324. In 1934, and thereafter, Local No. 3, carried on an arduous and extensive campaign to organize and unionize and, after much effort and labor, enrolled as members of the union employees of various manufacturers and contractors located in New York City and vicinity, who were engaged in the manufacture, installation and maintenance of electric neon signs and the equipment and materials used in connection therewith, such as electrodes, luminous transformers and flashers.

325. As a result of such organization and unionization campaign, the said manufacturers and contractors entered individually into collective bargaining agreements with Local Union No. 3, which provided for an improvement of the working conditions for those employees, including higher rates of hourly wages and shorter hours at the specified rate. 807

326. In 1937, Local No. 3 required that the luminous transformer used in connection with neon signs, manufac-

tured or installed by concerns working under agreement with Local No. 3, should be manufactured by a concern working under agreement with Local No. 3.

326-A. Local No. 3 had formerly carried the Red Arrow Company, located in Newark, New Jersey, manufacturers of luminous transformers, working under agreement with it, upon its Fair List, but when said Company did not renew its agreement with Local No. 3, and signed an agreement with Local 52, I.B.E.W., having jurisdiction of electrical work in Northern New Jersey, where said Company was located, the products of the Red Arrow Company were
809 removed from the Fair List of Local No. 3, because they were made in a factory not employing members of Local No. 3.

327. Local No. 3 has entered into written contracts with various employers, such as contractors installing signs for gasoline stations, and manufacturers of parts for electrical fixtures and manufacturers of portable lamps, requiring said employers to purchase only materials and equipment from factories employing members of Local No. 3, where such equipment was available and said clauses were calculated and intended to and do restrain interstate commerce.

328. One of the obligations of the union switchboard manufacturers' agreements with Local No. 3, as interpreted
810 by officials of Local No. 3, is that such manufacturers shall, where possible, make all the equipment to be installed on their switchboards, such as switches and metering devices, or purchase them from other local union manufacturers.

Local No. 3 Organizing Appeal

329. In or about 1936, or 1937, Local No. 3 caused to be printed and distributed among employees of local manufacturers, whom it desired to unionize, an appeal for

unionization, on the ground that the Local No. 3 union contractors and their union employees, installed the electrical equipment that the solicited employees produced, and that, therefore, Local No. 3, by reason of its control over the employees who installed or handled such local equipment, could offer greater co-operation and assistance than any other union.

330. During some of the time herein complained of, Local No. 3's members, employed on job sites, installed some of plaintiffs' and other out of town manufactured wire, cable, conduit, outlet boxes, fittings and other miscellaneous electrical materials without regard as to whether 812
said materials were manufactured by plaintiffs or out of town, even though they did not bear a Local No. 3 label.

331. During some of the time herein complained of, union electrical contractors purchased, used and installed, plaintiffs' and out-of-town manufactured wire, cable, conduit, outlet boxes, fittings and other miscellaneous electrical materials.

332. During the times herein complained of, some union electrical contractors expressed the sentiment that they voluntarily preferred to purchase wire, cable, conduit, outlet boxes, fittings and other miscellaneous electrical materials locally manufactured by members of Local Union No. 3, for one or more of the following reasons: 813

(a) Some of the union electrical contractors were former members of the union and, therefore, preferred to purchase products manufactured by members of the union;

(b) Union electrical contractors purchased some wire and cable from local union concerns at prices lower than some of those quoted by plaintiffs or out of town concerns;

(c) Union electrical contractors had purchased from local manufacturers prior to the time of their unionization and continued to purchase from the same concerns after they were unionized.

Co-operation of the Union Electrical Contractors

333. In December, 1936, the New York Electrical Contractors' Association called for an inventory of all electrical equipment in the hands of each of the members of the said Association, in order that, through arrangements with Local No. 3, non-union and unlabeled equipment purchased before there was any corresponding Local No. 3
815 labeled equipment on the market, might be inventoried and permitted to be used by Local No. 3 members while such non-union equipment purchased subsequent to the inventory date would not be permitted to be used.

334. In January, 1937, the New York Electrical Contractors' Association wrote a letter to the President of the I.B.E.W., stating that the Association was wholeheartedly behind the program to have its members purchase only union goods.

335. In May, 1937, the New York Electrical Contractors' Association issued to all of its members a "Fair List" of local union manufacturers, which list was made up from a list furnished by Local No. 3 to Dennis Crimmins, field
816 representative of the New York Electrical Contractors' Association, and formerly an official of Local No. 3, and which list excluded manufacturers working under agreements with Local Unions of the I.B.E.W. other than Local No. 3, and subsequently in August said Association issued a similar supplementary list.

336. Except to the extent or at the times otherwise stated in Findings 330, 331 and 332 the New York City union

electrical contractors have joined the combination of defendants to exclude from the Metropolitan Area electrical equipment made outside the Metropolitan Area, or by other than local union manufacturers, of the types manufactured by the Local Union manufacturers and, both because of fear of strikes, stoppages of work and refusal to install such equipment by members of Local No. 3 and because of a desire to cooperate with Local No. 3 for the reasons hereinbefore described, have aided, abetted and participated in, and at the time of the trial aided, abetted and participated in, said combination by, among other things, such acts as are described in Findings 333 and 335 hereof, and also by refusing to purchase electrical equipment not S18
manufactured in factories employing members of Local No. 3 where such equipment is obtainable bearing the Local No. 3 label, by refraining from asking for bids on such equipment from manufacturers not employing members of Local No. 3, by cancelling orders for electrical equipment not manufactured in factories employing members of Local No. 3, by specifying in ordering such equipment that it shall bear the union label of Local No. 3 and by having the New York Electrical Contractors Association actively aid and assist Local No. 3 in carrying out said boycott in return for advantages secured from Local No. 3.

337. It has been profitable for the union electrical contractors to confine their purchases of electrical equipment of the types manufactured by members of Local No. 3 to S19
Local No. 3 manufacturers at materially higher prices, as long as all other union electrical contractors are similarly restricted in their purchase of such equipment, because the increased cost thereof is passed on to the owner, builder, or Municipal or Governmental agency, and ultimately to the general public, and, under the said Code, the profit to the electrical contractor for the contract was based on the total cost thereof, including the cost of equip-

ment which, under the agreements between all electrical contractors and Local No. 3 as hereinbefore described in Finding No. 260 must be purchased and furnished by the electrical contractor rather than by the owner, builder, general contractor or Municipal or Governmental agency for whom the work was performed.

Other Acts by Defendants in Furtherance of Combination

338. Local Union No. 3 has from time to time furnished the New York Electrical Contractors Association, and in one instance an electrical contractor who was a member of the New York Electrical Contractors Association, with
821 "fair lists" containing the names of manufacturers working under agreements with Local No. 3 for the employment of its members exclusively. These "fair lists" constitute "black lists" of those not named on them.

339. The official publication of Local No. 3 sent by it to all its members instructed the members to insist upon the union label of Local No. 3 on all products where such a label was available.

340. It is the duty of foremen and shop stewards, members of Local No. 3, to notify union headquarters of Local No. 3 in the event any piece of equipment comes to their job without the union label of Local No. 3 and not to install such equipment without permission from headquar-
822 ters of Local No. 3.

341. Products bearing the union label of other locals of the I.B.E.W. were not acceptable to Local No. 3 where such products were of the type manufactured by members of Local No. 3. The International President of the I.B.E.W. forwarded to the New York Electrical Contractors Association a national "fair list" on which were included the names of manufacturers outside of New York of such

products employing members of local unions of the I.B.E.W. other than Local No. 3. Thereafter, Local No. 3 furnished to The New York Electrical Contractors Association a "fair list" of union manufacturers which the said New York Electrical Contractors Association distributed to all its members and which said list contained only the names of manufacturers employing members of Local No. 3 and omitted therefrom the names of such manufacturers as appeared on the said national "fair list" as did not employ members of Local No. 3.

342. The officers and business agents of Local No. 3 have instructed the union electrical contractors that it was 824
necessary for them to purchase and use only electrical products bearing the union label of Local No. 3 where available.

Exemption from Boycott Given to Certain "I" Contractors

343. In 1937 and 1938, when Local No. 3 undertook to unionize electrical contractors, doing alteration work in New York City, into a "Class I" group, in order thereby to obtain jurisdiction over so-called alteration work for its members, as hereinbefore described, and as an inducement for said unionization, it gave said alteration contractors, employers of "Class I" members, a favorable wage differential and other economic advantages, upon condition that they should not in any way compete at any wage scale 825
for public utility, City, State or Federal work, performed by said contractors, but that they would limit themselves to electrical work in one or two-family dwellings, and to repairs, alterations and industrial work of a nature and size formerly performed by them except as to those Class I contractors referred to in Finding #215 who could perform work other than Class I work, under the conditions stated in Finding #215. Such inducements were necessary to eliminate the uncontrolled competition of non-

union contractors on small jobs where the federated crafts did not work.

344. As an inducement to the Greater City Electrical Contractors' Association, which was the largest association of open shop contractors, Local No. 3 agreed that the members of said Association should be exempted from the boycott obligation to purchase only union-made equipment where available, and said exemption was expressed in a provision in its contract of August, 1938, as follows:

> "All materials for electrical work shall be purchased by and through the electrical contractor who may sup-
827 ply, select, furnish or use any type, kind, brand, etc. of material or equipment that he desires, provided it meets with the requirements of the laws, rules and regulations of the City of New York."

This concession was made because of the fact that members of the Greater City Electrical Contractors Association were not members of any Voluntary Code which would protect them from competition among themselves as to prices to be charged their customers for materials.

Boycotted Equipment

345. By the year 1937, the various items of electrical equipment on the boycott list of the union included, and
828 at the time of the trial included, lighting fixtures, low-tension switchboards, signalling equipment, panel boxes, control equipment, switches, other than toggle switches, high tension cables, armored BX cable, wire, outlet boxes, branch circuits and feeders.

The Conspiracy in General

346. Local No. 3, the individual defendants, and the officers, agents and members of Local No. 3 combined to-

gether with the local union contractors and local union manufacturers having contracts with Local No. 3, have instituted and made effective, and threaten to continue to maintain, boycotts upon certain kinds of the plaintiffs' products which have totally excluded these products from moving in interstate commerce into New York City and, as to others, have imposed such restrictions as to the rewiring and reassembling thereof as to constitute an undue burden and restraint upon such commerce. In the case of panel boards and switchboards, the boycott has become complete and interstate commerce in these articles has been effectively stifled so far as manufacturers outside of New York City are concerned, with the exception of such types 830
of said products as the local union manufacturers are not equipped to make; and with respect to such excepted products, the union has restrained and burdened commerce, wherever practicable so to do, by requirements to the effect that such products shall be assembled and wired at the construction job. In the case of lighting fixtures, the boycott has become complete as respects lighting fixtures completely wired and assembled outside of the State of New York and interstate commerce in these completed articles has been effectively ended, through the union requirement that such articles must be either disassembled and rewired and reassembled and rewired in New York "Class C" shops set up by Local No. 3 or else that such articles be shipped in a knocked-down condition so that they may be so wired and assembled in said shops. In the 831
case of control apparatus, the boycott has become complete and interstate commerce in the completed articles has been effectively ended with the exception of certain smaller compact units, which it is not possible to unwire and disassemble and rewire and reassemble on the job. There is likewise a complete boycott of such types of signalling apparatus, wire and cable, switch boxes, range cords, luminous transformers and such other equipment as

are manufactured in substantial quantities by Local No. 3 factories operating in New York City except as otherwise stated in finding #326, 330, 331 and 332.

347. The combination and conspiracy hereinabove described and the acts in furtherance thereof have continued for many years and the further continuance of such combination and conspiracy and acts in furtherance thereof is threatened.

348. By reason of the foregoing, the plaintiffs and all of them are and, for many years past, have been suffering irreparable damage and injury and are threatened
833 with further irreparable damage and injury by reason of the combination and conspiracy hereinabove described.

Higher Prices Charged by Local Union Manufacturers

349. Some union manufacturers of outlet boxes and switches located in New York City, and working under agreement with Local No. 3, issued from time to time two different price lists for the same products, one containing prices for their products without the union label—for the solicitation of business in unprotected areas where free and open competition must be met, and another containing a price list on a different colored sheet, covering the same products, made by the same employees in the same factory, with the union label, for the solicitation of business in the
834 protected area in New York City and the Metropolitan area, and in some instances, the prices for the protected area have been more than double the prices charged for the same items in the unprotected area.

350. In one case in 1935, a supply house charged a union electrical contractor for a meter pan, manufactured by a union electrical manufacturer with a union label thereon the sum of $5.40 which sum was more than the basic price

of the article itself without the union label thereon, which was $2.40.

351. In most cases, the prices charged the New York City union electrical contractors for electrical equipment and material obtained from the local union manufacturers have been and at the time of the trial were materially higher than the prices at which such contractors could purchase similar or identical equipment and material from the plaintiffs or from other manufacturers not employing members of Local No. 3.

352. Said higher prices charged by said local union 836
manufacturers for the sale of products to be used in New York City are due to the barriers which the boycott practices of Local No. 3, aided, abetted and participated in by the local union electrical contractors and local union electrical manufacturers, have established to prevent manufacturers outside of the City of New York from competing with local union manufacturers in the City of New York for the sale of products to be used in the City of New York, and to create and maintain a monopoly in the Metropolitan Area for electrical products manufactured in factories employing members of Local No. 3.

353. The combination and conspiracy hereinbefore described was intended to and did give the local union manufacturers power to control the market price of their prod- 837
ucts as a result of their monopoly and was intended to and did give the union contractors exclusive purchasing rights to all electrical equipment for installation and contracts involving larger sums of money wherewith to add to their profits.

Effect of Boycott

354. The effect of the defendants' combination, and the power which it wields over the electrical construction industry in the City of New York, is so great that no union electrical contractor dares to purchase electrical equipment on a competitive basis if there is available in the market electrical equipment made by members of Local No. 3, or dares to purchase any electrical equipment other than that made by members of Local No. 3 where electrical equipment made by members of Local No. 3 is available, and no owner, or architect, or engineer is able to purchase such products in contravention of the contractors' protective
839 union agreement in regard to purchasing.

355. The activities of the defendants in creating unnecessary work, in forcing the duplication of work, in shutting off New York City from the benefits of interstate commerce, and in requiring work to be done at the building which should normally be done in the factory, has caused undue prejudice to the public and imposed economic burdens. The cost of wiring and assembling lighting fixtures in factories employing members of Local No. 3 for installation in buildings in New York City is more than three times such costs for fixtures wired and assembled in the Westinghouse plant outside of New York City. The cost of disassembling and rewiring control equipment at the
840 building to be installed in New York City is three times the cost of wiring and assembling such equipment at the factory.

356. The intended and necessary effect of the aforesaid combination of Local No. 3, its members, officers and agents, the New York City union electrical contractors and the New York City union electrical manufacturers has been and is to create a barrier which unduly restrains interstate commerce and which largely excludes from installation in

the Metropolitan Area electrical materials and equipment made by plaintiffs and by others not employing members of Local No. 3 of the types enumerated, which products were formerly widely sold by plaintiffs in the Metropolitan Area without restrictions through interstate commerce for use in building construction in the Metropolitan Area. Plaintiffs' sales of these banned products for installation on union jobs in the Metropolitan Area had by reason of the combination and conspiracy herein described practically ceased by the end of 1936, and such business was acquired entirely by the local union manufacturers, who since that time have had, and at the time of the trial had a monopoly of such business. 842

357. The business of the plaintiffs General Electric Company and Westinghouse Electric and Manufacturing Company in interstate commerce which has been blocked by the aforesaid combination of the defendants, Local No. 3, its officers and agents and the New York City union electrical contractors and the New York City union electrical manufacturers, amounted on the average in switchboards alone to over $250,000 for the two years preceding the boycott.

358. The effectiveness of the combination of the defendants in concert with the local union electrical contractors and the local union electrical manufacturers has been so great that New York City has been and is shut off from 843 the benefits of freedom of interstate commerce in the proscribed products and from the benefits of competition in the sale of such products, thereby causing great injury to the plaintiffs and to the public in the Metropolitan Area.

Purpose of Boycott

359. The purpose of the defendants and those participating with them, in conducting the boycott is, in so far as

is practicable, to exclude from the New York City market all electrical equipment unless it is manufactured or built by members of Local No. 3, employed by either local union manufacturers in the factory or by local union contractors on the job where the equipment is to be installed.

360. The ban on goods made by the plaintiffs, or any of them, in any of their factories outside the City of New York, is an absolute ban, which plaintiffs cannot avoid or escape and could not have avoided or escaped by any lawful act on their part in regard to wages, hours or other terms or conditions of employment or representation of their
845 employees in their factories outside the Metropolitan Area, and the said boycott on said goods is not imposed or enforced for the purpose of inducing the plaintiffs to make any change in the terms and conditions of employment maintained by them or any of them, or to induce the plaintiffs, or any of them, to change their attitude in respect to the association, or representation, of any of their employees in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment or in respect to their employment relations.

361. The defendants and those acting in concert with them were, and are, in no way concerned with the working conditions, rates of wages or union affiliations of the employees in plaintiffs' factories outside the Metropolitan
846 Area, and it was, and is, immaterial to them as far as the barrier erected and maintained by them to interstate commerce is concerned, whether members of other locals of the I.B.E.W. were or are employed by the plaintiffs. The ban on the plaintiffs' products is and has been imposed and maintained by the aforesaid combination of the defendants, the local union contractors and the local union manufacturers, solely because the plaintiffs do not, or because of their geographical location outside the Metropolitan Area

cannot, employ members of Local No. 3 in their factories outside the Metropolitan Area.

362. Except for an attempt to unionize the employees of Cutler-Hammer, Inc., at its New York City plant as stated in Findings 23 and 24 and an attempt to unionize the New York City Service Shop of General Electric Company, as referred to in Findings 55 to 58 where at the time of the trial of this action General Electric Company was dealing with representatives of Local No. 3 in accord with an order of the National Labor Relations Board, and except with reference to the Westinghouse plant in Newark, New Jersey, as stated in Finding 82, there has been no attempt 848
by the defendants to engage in any negotiations with any of the plaintiffs as to terms or conditions of employment or as to representation of their employees in negotiations.

363. The subject-matter of this suit, based on the boycott of the products of the plaintiffs by the defendants in concert with the local union electrical contractors and the local union manufacturers, does not directly or indirectly involve or grow out of any controversy, or dispute, between any of the plaintiffs and defendants, or between any of the plaintiffs and any of their employees, or between any of the plaintiffs and any one else, over the terms and conditions of employment maintained by the plaintiffs, or any of them, or over the matter of association or representation of employees of any of the plaintiffs in negotiating, fixing, 849
maintaining, changing or seeking to arrange terms or conditions of employment or in respect to their employment relations.

364. All of the acts of the defendants, and of those acting in concert with them, in boycotting the products of the plaintiffs were for the purpose of maintaining a monopoly in the Metropolitan Area of the work of manufacturing,

fabricating and producing said products in whole or in part.

365. The purpose of the defendants, and those acting in concert with them, is and was to restrain and prevent all interstate commerce between the plaintiffs, or any of them, or other manufacturers not employing members of Local No. 3, and purchasers of electrical equipment for use in New York City, and to prevent competition at any price in New York City between products manufactured by local union manufacturers working under agreement with Local No. 3 in New York City, and products manu-
851 factured by the plaintiffs and others in factories outside of the City of New York, where such products were to be used in that City, in order that so far as is practicable all purchasers of said products for use in the City of New York would be compelled to purchase and use only products in connection with which Local No. 3 members do any of the electrical work, either as employees in local union factories in New York City, or as employees of union contractors on the job in New York City where said goods were to be installed.

366. All the acts of the defendants and those acting in concert with them were calculated and intended to prevent and destroy all interstate commerce in electrical equipment of such kinds as can be and are manufactured by
852 local union manufacturers or built on the job by local union contractors, in order thereby to secure a monopoly for the members of Local No. 3 and for their employers, the union electrical contractors and the union electrical manufacturers, of the work of manufacturing in whole or in part such types of electrical equipment to be used in the City of New York.

367. There is no conflict or issue between Local No. 3, its members, or contractors or manufacturers having agree-

ments with it, involving, or growing out of, any controversy or issue concerning terms or conditions of employment of plaintiffs' employees outside of the City of New York, or concerning the association or representation of plaintiffs' employees, or concerning any employment relations between plaintiffs and their employees, or any other controversy arising out of the respective interests of the plaintiffs, or any of them, and their said employees, or any of them, except as to the General Electric Company plant in New York City mentioned in Finding #59.

368. A desire or intention by the conspirators to bring about any modification of the standards or terms of wages, 854
hours, or working conditions, or employment relations maintained by the plaintiffs, or any of them, in any of their factories outside the Metropolitan Area, did not in any way motivate the conspirators in boycotting the plaintiffs' products.

369. The activities of the defendants in seeking to prevent the sale of electrical equipment made by the plaintiffs, or any of them, or in seeking to promote the sale of electrical equipment made by local union manufacturers in New York City, and bearing the Local No. 3 label in preference to the corresponding equipment made by the plaintiffs, or any of them, does not involve or grow out of any ~~labor dispute between~~ the plaintiffs, and their employees, over the terms and conditions of employment of 855
any of the employees of the plaintiffs, or over the representation or association of any of the employees of the plaintiffs, or over any matter concerning the employment relations, or of the respective interests of employer and employee as between the plaintiffs and any of their employees.

370. There is no evidence that any threat of violence has been made against any of the plaintiffs by any of the de-

856 *Final Decree and Declaratory Judgment.*

fendants herein, or their agents, or any violence toward any of the plaintiffs perpetrated by any of the defendants.

371. The plaintiffs invoke the jurisdiction of this Court under the provisions of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies;" together with acts amendatory thereof and supplementary thereto.

372. Because of such alleged jurisdiction the plaintiffs seek an injunction and also a declaratory judgment.

857 373. The plaintiffs' complaint does not claim jurisdiction of this Court on the ground of diversity of citizenship.

374. There is now pending in this Court another action at law, brought by most of the plaintiffs in this action against most of the defendants named in this action which was commenced under the title "The Clark Controller Company, et al. v. Local Union No. 3, et al.," and brought under Section 15, Title 15 of the U. S. Code Annotated, at law, for treble damages, in which the issues of fact are similar to the issues in the instant case.

Conclusions of Law

858 1. This Court has, and at the time of the commencement of this action and at all times thereafter had, jurisdiction of the subject-matter of this action because the issues herein involve the interpretation, application and enforcement of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", together with acts amendatory thereof and supplementary thereto.

2. This Court duly acquired jurisdiction of all the parties to this action.

3. The combination and conspiracy to prevent the sale and use of plaintiffs' completed products in New York City, described in the foregoing Findings of Fact, and all acts in furtherance thereof, are unlawful and contrary to the laws of the United States, enacted July 2, 1890, and entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" and laws amendatory thereof and supplementary thereto.

4. The activities of the conspirators hereinbefore described in boycotting certain electrical equipment and materials not made by members of Local No. 3 and in requiring that certain of said equipment for use in New York 860
City be wired and assembled by members of Local No. 3 are not legitimate labor activities falling into the sphere designated by the Supreme Court of the United States as "licit and not illici[t]".

5. Neither the defendants nor their actions and activities above described are in this case exempt from the operation of the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" and laws amendatory thereof and supplementary thereto.

6. This case does not involve or grow out of a "labor dispute" as defined in the Norris-LaGuardia Act of March 23, 1932 (48 Stat. 70; 29 U. S. C. 101-115) and neither that 861
Act nor anything therein contained deprives this Court of the right and power to grant the relief prayed for by the plaintiffs herein.

7. No compliance with the terms of said Norris-LaGuardia Act is requisite to the issuance of any injunction herein.

862 *Final Decree and Declaratory Judgment.*

8. This Court has, and at the time of the commencement of this action and at all times thereafter had, jurisdiction to grant an injunction or issue a declaratory judgment herein as prayed for by the plaintiffs.

9. The plaintiffs have no adequate remedy at law.

10. The evidence introduced by defendants over plaintiffs' objections in an attempt to show alleged improper motives on the part of plaintiffs in bringing this action should be and hereby is disregarded as not tending to prove facts which are material and relevant and which
863 constitute a proper defense herein.

11. The evidence introduced by defendants in an attempt to prove facts which would constitute a defense that plaintiffs did not come into this Court herein with clean hands is, upon motion previously made by plaintiffs stricken out and disregarded as not tending to prove facts which constitute a proper defense herein.

12. This case involves a controversy involving persons who are engaged in and who have direct or indirect interests in the same industry, trade, craft or occupation,—the making and installation of electrical products.

13. Unlawful acts by defendants have been threatened
864 and will be committed unless restrained, and have been committed and will be continued, unless restrained.

14. Substantial and irreparable damage to plaintiffs' property has been caused and will follow.

15. As to each item of relief sought, greater injury would be inflicted upon plaintiffs by the denial of relief than would be inflicted upon defendants by the granting of relief.

16. The public officers charged with the duty to protect the plaintiffs' property are unable to furnish adequate protection.

17. There is already pending on the law side of this Court another action entitled: "THE CLARK CONTROLLER COMPANY, et al. v. LOCAL UNION No. 3, et al.," involving similar issues and some of the parties.

18. The right of trial by jury is guaranteed to defendants by statute and decisions in actions at law, under the Sherman Anti-Trust Act, and in actions at law, under the Federal Anti-Trust Laws, unless waived. 866

19. The activities of Local Union No. 3 in calling strikes on electrical operations conducted by the various City Departments for the purpose of obtaining employment for its construction members, were unreasonable and unlawful.

20. The law recognizes that Local Union No. 3 has the right to determine whom it should admit as members, so long as that right is exercised reasonably and not arbitrarily.

21. The law recognizes that Local Union No. 3 has the right to determine with whom it shall enter into collective bargaining agreements. 867

22. The law recognizes that Local Union No. 3 has the right to enter into closed shop collective bargaining agreements.

23. Plaintiffs are entitled to a declaratory judgment declaring that the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to

the Act of Congress of July 2, 1890 entitled an "Act to Protect Trade and Commerce against unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Law, as amended and supplemented.

24. Plaintiffs are entitled under the provisions of the Clayton Act (Act of October 5, 1914, 38 Stat. 737, 15 U. S. C., Sec. 26) to injunctive relief as prayed for by them in the amended complaint herein.

25. An injunction should issue herein on behalf of plaintiffs which shall effectively dissolve the combination and
869 conspiracy herein described and prevent any further and other acts in furtherance thereof.

26. The plaintiffs are entitled to judgment against the defendants in accordance with the foregoing, together with costs and disbursements.

AND IT IS FURTHER ORDERED, ADJUDGED & DECREED:

4. That plaintiffs' motion for counsel fees be and the same is hereby denied.

5. The Court hereby declares that the combination and conspiracy and the acts done and being done down to the date of the conclusion of the taking of testimony herein
870 before the Special Master, in furtherance thereof, all as set forth in the findings of fact as made and adopted by the Court herein, are unlawful and contrary to the Act of Congress of July 2, 1890, entitled an "Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known a the Sherman Anti-Trust Law, as amended and supplemented, and it is

FURTHER ORDERED, ADJUDGED AND DECREED, as follows:

6. That the Clerk of the Court issue a writ of injunction directed to defendants Local Union No. 3, International Brotherhood of Electrical Workers and the members thereof, and Bert Kirkman, William Beck, Hugh Morgan, Jacob S. Solomon and Gerald Duffy, and each of them, their and each of their agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, or any of them, perpetually and permanently restraining and enjoining them, and each of them, from in any manner combining and conspiring to obstruct, restrain or interfere with the interstate trade or commerce of the plaintiffs, or 872
any of them, by

(a) Inducing or seeking or attempting to induce any person, firm, or corporation to refrain from purchasing or from agreeing to purchase any electrical equipment, including electric switchboards, electric panel boards, distribution boards, power switches, safety switches, knife switches, enclosed switches, cutout boxes, small and large air circuit breakers, motor starters and controllers and other industrial control apparatus, lighting fixtures, lighting sockets, signaling devices, conduits and wire and cable for the transmission of electrical current, or any of the same from any of said plaintiffs;

(b) Inducing or seeking or attempting to induce any person, firm or corporation to refrain from performing 873
or carrying out any contract, agreement or understanding, whether oral or in writing, for the purchase from any of the plaintiffs of any electrical equipment, including that mentioned and described in subdivision (a) of the foregoing.

(c) In any manner whatsoever diverting or seeking or attempting to divert from any of the manufacturing plaintiffs any business, contracts, or orders for or

relating to the aforesaid electrical equipment produced by said manufacturing plaintiffs, or any of them, upon the ground that the assembling and wiring of such equipment are wholly or partially performed in the respective factories of said plaintiffs.

(d) In any manner or by or through any acts or means preventing the plaintiffs from securing orders for or making sales of any of the electrical equipment manufactured by them, or any of them, as mentioned in subdivision (a) of the foregoing, upon the ground that such equipment is wholly or partially assembled and wired in the respective factories of said manufacturing plaintiffs outside the Metropolitan Area, meaning thereby the five boroughs of New York City.

875

(e) Inducing, ordering or in any manner or by or through any means or methods requiring any owner, builder, contractor, eletcrical contractor or other possible or potential purchaser of any of the electrical equipment mentioned in subdivision (a) aforesaid to execute or enter into or to observe, carry out or perform any contract, agreement or understanding which in substance or effect requires such owner, builder, contractor, electrical contractor or purchaser not to purchase such equipment from any of the plaintiffs.

(f) Inducing, ordering, directing or requiring any person or persons to refuse to handle, connect, install or work upon any of the electrical equipment mentioned in subdivision (a) of the foregoing, produced by the plaintiffs, or any of them, while said person or persons are permitted to handle, connect, install or work upon similar products made, wired, assembled or sold by any competing manufacturer or manufacturers within the Metropolitan Area aforesaid.

876

(g) Adopting, promulgating, maintaining or enforcing any rule or regulation forbidding the members of the defendant Local Union No. 3 or any of them to handle, connect, install, wire, assemble or work upon any of the electrical products mentioned in subdivision (a) hereinabove referred to, and produced by any of the plaintiffs and from fining, expelling or otherwise disciplining any of said members for disobeying any such rule or regulation.

(h) Inducing, ordering, directing or requiring any person or persons not to handle or install the aforesaid electrical equipment unless after being completely wired and assembled by the plaintiffs, or one of them, 878
in their respective factories, said equipment is disassembled and unwired in part and shipped into said Metropolitan Area in said unfinished state, or unless said equipment is wired and disassembled and rewired and reassembled by members of said Local Union No. 3 within its territorial jurisdiction.

(i) Making, carrying out, or in any way seeking to secure the observance of agreements or understandings with contractors, manufacturers, or others, restraining, hindering or preventing the purchase, sale, use, installation or assembling of electrical equipment made by the plaintiffs, or any of them, on the ground that said equipment is not made in New York City, in whole or in part, or was not worked upon by members of 879
Local Union No. 3, or enters into competition with electrical equipment made by manufacturers who employ members of Local Union No. 3 in New York City, or vicinity, or elsewhere, within the jurisdiction of said Local Union No. 3.

(j) Taking any action whatsoever, or attempting so to do, to prevent, stop, hinder or burden the purchase,

installation, assembling or use of any kind of electrical equipment produced by the plaintiffs, or any of them, on the ground that such equipment was not made in New York City, in whole or in part, or was not worked upon by members of said Local Union No. 3, or enters into competition with electrical equipment made by manufacturers who employ members of said Local Union No. 3 in New York City or vicinity, or elsewhere within the jurisdiction of said Local Union No. 3.

7. The parties herein having consented thereto, taxation of costs by the Clerk of this Court is hereby dispensed
881 with, and it is further

ORDERED, ADJUDGED AND DECREED

8. That the plaintiffs recover from defendants their costs and disbursements in this action in all amounting to Thirty-one thousand six hundred ten and 42/100 Dollars ($31,610.42) as follows:

Docket Fee	$ 20.00
Clerk's Fee	11.00
Special Master's Fees	20,480.00
Stenographer's Fees	9,885.42
Witness and Service Fees	1,214.00
Total	$31,610.42

882 and that plaintiffs have execution against defendants for said sum of Thirty-one thousand six hundred ten and 42/100 Dollars ($31,610.42).

Dated September 23, 1943.

FRANCIS G. CAFFEY,
U. S. D. J.

We hereby waive taxation of costs herein by the Clerk of this Court and consent that such taxation be dispensed with.

McLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiff.

HAROLD STERN,
Attorney for Defendants.

Judgment rendered.
GEORGE J. H. FOLLMER,
Clerk.
Sept. 23, 1943.

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884 Pursuant to Rule 25 of the Rules of Civil Practice of the United States District Court, Southern District of New York, the following is a list of the names of the parties entitled to be notified of the entry of the annexed final decree and declaratory judgment, and the name and address of their respective attorney.

Names of Parties

LOCAL UNION No. 3, International Brotherhood of Electrical Workers;

BERT KIRKMAN, individually and as president thereof;

WILLIAM BECK, individually and as treasurer thereof;

HUGH MORGAN, individually and as assistant business 885 manager thereof;

JACOB S. SOLOMON, individually and as business agent thereof;

GERALD DUFFEY, individually and as an agent thereof.

Attorney for the Above Parties

HAROLD STERN, Esq.
Address No. 70 Pine Street
New York City, New York.

886

Writ of Injunction.

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK } ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO

Local Union No. 3, International Brotherhood of Electrical Workers and the members thereof, and
Bert Kirkman
William Beck
Hugh Morgan
Jacob S. Solomon, and
887 Gerald Duffy,

and each of them, their and each of their agents, servants, attorneys, confederates and all persons acting in aid of or in conjunction with them or any of them, GREETING:

WHEREAS, Allen Bradley Company, Allis-Chalmers Manufacturing Company, Clark Controller Company, Colt's Patent Fire Arms Manufacturing Company, Cutler-Hammer, Inc., The Electric Controller & Manufacturing Company, General Electric Company, Monitor Controller Company, Square D Company, Trumbull Electric Manufacturing Company and Westinghouse Electric & Manufacturing Company, as plaintiffs and hereinafter referred to as the "plaintiffs," have filed on the equity side of the District
888 Court of the United States for the Southern District of New York, a bill of complaint and an amended bill of complaint against Local Union No. 3, International Brotherhood of Electrical Workers, Bert Kirkman, individually and as President thereof, William Beck, individually and as Treasurer thereof, Hugh Morgan, individually and as Assistant Business Manager thereof, George W. Whitford, individually and as Recording Secretary thereof, Jacob S.

Solomon, individually and as Business Agent thereof, and Gerald Duffy, individually and as an Agent thereof, as defendants and have obtained a final decree dated and filed in the office of the Clerk of this Court on September 23, 1943, for a perpetual and permanent injunction as prayed for in said amended bill,

NOW, THEREFORE, we, having regard to the matters in said amended bill contained, do hereby command and strictly enjoin you, the said Local Union No. 3, International Brotherhood of Electrical Workers and the members thereof, and Bert Kirkman, William Beck, Hugh Morgan, Jacob S. Solomon and Gerald Duffy, and each of you, your and 890
each of your agents, servants, attorneys, confederates and all persons acting in aid of or in conjunction with you or any of them, until the further order of our said District Court from in any manner combining and conspiring to obstruct, restrain or interfere with the interstate trade or commerce of the said plaintiffs, or any of them by,

(a) Inducing or seeking or attempting to induce any person, firm, or corporation to refrain from purchasing or from agreeing to purchase any electrical equipment, including electric switchboards, electric panel boards, distribution boards, power switches, safety switches, knife switches, enclosed switches, cutout boxes, small and large air circuit breakers, motor starters and controllers and other industrial control apparatus, light- 891
ing fixtures, lighting sockets, signaling devices, conduits and wire and cable for the transmission of electrical current, or any of the same from any of said plaintiffs.

(b) Inducing or seeking or attempting to induce any person, firm or corporation to refrain from performing or carrying out any contract, agreement or understanding, whether oral or in writing, for the purchase from

any of the plaintiffs of any electrical equipment, including that mentioned and described in subdivision (a) of the foregoing.

(c) In any manner whatsoever diverting or seeking or attempting to divert from any of the manufacturing plaintiffs any business, contracts, or orders for or relating to the aforesaid electrical equipment produced by said manufacturing plaintiffs, or any of them, upon the ground that the assembling and wiring of such equipment are wholly or partially performed in the respective factories of said plaintiffs.

893 (d) In any manner or by or through any acts or means preventing the plaintiffs from securing orders for or making sales of any of the electrical equipment manufactured by them, or any of them, as mentioned in subdivision (a) of the foregoing, upon the ground that such equipment is wholly or partially assembled and wired in the respective factories of said manufacturing plaintiffs outside the Metropolitan Area, meaning thereby the five boroughs of New York City.

(e) Inducing, ordering or in any manner or by or through any means or methods requiring any owner, builder, contractor, electrical contractor or other possible or potential purchaser of any of the electrical equipment mentioned in subdivision (a) aforesaid to
894 execute or enter into or to observe, carry out or perform any contract, agreement or understanding which in substance or effect requires such owner, builder, contractor, electrical contractor or purchaser not to purchase such equipment from any of the plaintiffs.

(f) Inducing, ordering, directing or requiring any person or persons to refuse to handle, connect, install or work upon any of the electrical equipment mentioned in subdivision (a) of the foregoing, produced by the

plaintiffs, or any of them, while said person or persons are permitted to handle, connect, install or work upon similar products made, wired, assembled or sold by any competing manufacturer or manufacturers within the Metropolitan Area aforesaid.

(g) Adopting, promulgating, maintaining or enforcing any rule or regulation forbidding the members of the defendant Local Union No. 3 or any of them to handle, connect, install, wire, assemble or work upon any of the electrical products mentioned in subdivision (a) hereinabove referred to, and produced by any of the plaintiffs and from fining, expelling or otherwise disciplining any of said members for disobeying any 896 such rule or regulation.

(h) Inducing, ordering, directing or requiring any person or persons not to handle or install the aforesaid electrical equipment unless after being completely wired and assembled by the plaintiffs, or one of them, in their respective factories, said equipment is disassembled and unwired in part and shipped into said Metropolitan Area in said unfinished state, or unless said equipment is wired and disassembled and rewired and reassembled by members of said Local Union No. 3 within its territorial jurisdiction.

(i) Making, carrying out, or in any way seeking to secure the observance of agreements or understandings 897 with contractors, manufacturers, or others, restraining, hindering or preventing the purchase, sale, use, installation or assembling of electrical equipment made by the plaintiffs, or any of them, on the ground that said equipment is not made in New York City, in whole or in part, or was not worked upon by members of Local Union No. 3, or enters into competition with electrical equipment made by manufacturers who employ members of Local Union No. 3 in New York City,

or vicinity, or elsewhere, within the jurisdiction of said Local Union No. 3.

(j) Taking any action whatsoever, or attempting so to do, to prevent, stop, hinder or burden the purchase, installation, assembling or use of any kind of electrical equipment produced by the plaintiffs, or any of them, on the ground that such equipment was not made in New York City, in whole or in part, or was not worked upon by members of said Local Union No. 3, or enters into competition with electrical equipment made by manufacturers who employ members of said Local Union No. 3 in New York City or vicinity, or elsewhere
899 within the jurisdiction of said Local Union No. 3.

which commands and injunctions you are respectively required to observe and obey until our said District Court shall make further order in the premises.

WHEREOF, fail not under penalty of the law thence ensuing.

WITNESS, the HONORABLE JOHN C. KNOX, Judge of the District Court of the United States, this 24th day of September, 1943, and in the 168th year of the Independence of the United States of America.

900 (Court Seal)

(Sgd) GEORGE J. H. FOLLMER,
Clerk of the District Court of the United States for the Southern District of New York.

McLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs,
40 Wall Street,
New York, N. Y.

901

Notice of Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Sirs:

NOTICE is hereby given that all of the defendants above named, hereby appeal to the Circuit Court of Appeals for the Second Circuit from the final decree and declaratory judgment entered in this action on September 23, 1943.

902

Dated, New York, New York, December 14th, 1943.

HAROLD STERN,
Attorney for all of the above named defendants,
Office and Post Office Address:
No. 70 Pine Street,
New York, New York

To:

HON. GEORGE J. H. FOLLMER,
Clerk of the United States District Court,
Southern District of New York.

MCLANAHAN, MERRITT & INGRAHAM, Esqs., 903
Attorneys for the Plaintiffs
Office and Post Office Address
No. 40 Wall Street,
New York, New York.

904

Stipulation as to the Contents of the Record on Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED, pursuant to subdivision (f) of Rule 75 of the Rules of Civil Procedure, that the record on appeal in the above entitled case shall consist of the following papers:

905 Statement Under Rule 13.
Bill of Complaint.
Stipulation Amending Bill of Complaint.
Answer.
Order Granting Leave to File and Serve Amended Bill of Complaint.
Amended Bill of Complaint.
Answer to Amended Bill of Complaint.
Stipulation For Appointment of Special Master.
Order Appointing Special Master.
Order of Discontinuance as to Certain Plaintiffs.
Opinion of the Special Master.
Stipulation as to contents of Special Master's Decision, Findings of Fact and Conclusions of Law, and Dispensing with the printing of same.
906 Stenographer's Minutes dated June 10, 1943, setting forth Opinion of Judge Francis G. Caffey.
Stipulation Covering Objections as to the Form of the Final Decree.
Final Decree and Declaratory Judgment.
Writ of Injunction.
Notice of Appeal.
Stipulation as to the Contents of the Record on Appeal.

Stipulation as to the Correctness of the Record on Appeal.
Clerk's Certificate.

Dated, New York, December 29th, 1943.

McLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs.

HAROLD STERN,
Attorney for Defendants.

908

Stipulation as to the Correctness of the Record on Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true and correct transcript of the record of the said District Court in the above-entitled cause, as agreed on by the parties.

Dated, New York, January 31, 1944. 909

HAROLD STERN,
Attorney for Defendants-Appellants.

McLANAHAN, MERRITT & INGRAHAM,
Attorneys for Plaintiffs-Appellees.

910

Clerk's Certificate.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

I, GEORGE J. H. FOLLMER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct copy of the printed transcript of record of the said District Court in the above-entitled cause, as agreed on by the parties.

911

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed at the City of New York in the Southern District of New York on the 3rd day of ~~January~~ February in the year of our Lord one thousand nine hundred and forty-four, and the independence of the United States the one hundred and sixty-eighth.

(Seal)

GEORGE J. H. FOLLMER,
Clerk.

912

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 339—October Term, 1943.

(Argued May 10, 1944 Decided October 12, 1944.)

ALLEN BRADLEY COMPANY, *et al.*,

Plaintiffs-Appellees,

—*v.*—

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, *et al.*,

Defendants-Appellants.

Before:

SWAN, AUGUSTUS N. HAND and CLARK,

Circuit Judges.

Appeal from the District Court of the United States for the Southern District of New York.

Action by Allen Bradley Company and ten other companies manufacturing electrical equipment against Local Union No. 3, International Brotherhood of Electrical Workers, and six named persons individually and as officers or agents of the Union, for an injunction and a declaratory judgment of illegality of certain alleged union activities. From a judgment for the plaintiffs, 51 F. Supp. 36, upon report of a special master, 41 F. Supp. 727, the defendants appeal. Judgment reversed and action dismissed.

HAROLD STERN, of New York City (George Rosling and Saul Pearce, both of New York City, on the brief), for defendants-appellants.

WALTER GORDON MERRITT, of New York City (McLanahan, Merritt & Ingraham, Burgess Osterhout, and Hyler Connell, all of New York City, on the brief), for plaintiffs-appellees.

CLARK, *Circuit Judge*:

Defendants, Local Union No. 3 of the International Brotherhood of Electrical Workers, American Federation of Labor, and certain of its officers, appeal from an order of the district court enjoining various activities of the union and declaring them to be a conspiracy in restraint of trade in violation of the Sherman Antitrust Act, 15 U. S. C. A. §1, *et seq.*, and laws amendatory thereof. The enjoined activities constitute in sum any and all actions on the part of the union which would tend to boycott from the New York City area market electrical equipment manufactured by the various plaintiffs.

Plaintiffs filed their complaint below in December, 1935. The following year most of the plaintiffs joined in a companion suit against the union, and additional defendants, for treble damages at law under the Sherman Act; and this has remained pending in the district court without trial. The parties agreed to refer the present action to a special master for determination of "all issues of law and fact," and it was so ordered. After two and one-half years of hearings, at which, as the master states, more than 400 witnesses were examined, some 1,700 exhibits were presented, and some 25,000 pages of testimony adduced, he filed an opinion, October 2, 1941, in which he discussed the facts

and the law, concluding that the plaintiffs should have judgment, and asked the parties to submit proposed findings of fact and conclusions of law, 41 F. Supp. 727. The parties having complied, the master, on November 23, 1942, filed his final report, containing lengthy findings and conclusions, which, upon cross-petitions to confirm and dismiss, the court below confirmed with some limited alterations and additions to the findings, 51 F. Supp. 36. The final decree, covering 121 printed pages of the record, included these findings, 374 in number, with 26 conclusions of law, as well as the form of injunction to be issued and the declaratory judgment declaring "that the combination and conspiracy and the acts done and being done down to the date of the conclusion of the taking of testimony herein before the Special Master, in furtherance thereof, all as set forth in the findings of fact as made and adopted by the Court herein, are unlawful and contrary to" the Sherman Act. This appeal is taken upon only the findings and judgment, and hence does not seek any modification of the facts found.[1]

1 These union activities appear to have been in other litigation in the court below. They were the subject of four indictments against the union and its officers and others under the Sherman Act, which were sustained upon demurrer as not involving a "labor dispute" within the statutory exemption hereinafter discussed. *United States* v. *Local Union No. 3*, D. C. S. D. N. Y., 42 F. Supp. 783; *United States* v. *New York Electrical Contractors Ass'n*, D. C. S. D. N. Y., 42 F. Supp. 789; *cf.* 42 Col. L. Rev. 1067, 40 Mich. L. Rev. 1244. The court records show, however, that petitions for reargument were filed by defendants after the decision in *United States* v. *American Federation of Musicians*, 318 U. S. 741, discussed below; and thereafter on September 22, 1943, the cases were *nol prossed*. Slightly earlier a union affiliated with the C. I. O. sought an injunction forbidding its boycott by Local Union No. 3, the International Brotherhood of Electrical Workers, and others, and basing its action upon claimed rights under the National Labor Relations Act; but it was unsuccessful. *United Electrical, R. & Mach. Workers* v. *I. B. of E. Workers*, 2 Cir., 115 F. 2d 488, affirming D. C. S. D. N. Y., 30 F. Supp. 927; *cf.* 54 Harv. L. Rev. 513; Boudin, *Representatives of Their Own Choosing*, 38 Ill. L. Rev. 41, 47. The master's opinion herein is discussed in 28 Va. L. Rev. 554 and 5 U. Det. L. J. 132.

The eleven plaintiffs in the action are manufacturers of electrical equipment whose factories are located for the most part without the New York City area. Several operate under collective bargaining agreements with local unions in their localities. Local 3 is the powerful local for the five boroughs of New York City of the International Brotherhood of Electrical Workers, itself one of the most influential members of the American Federation of Labor. Local 3 possesses approximately 15,000 members, divided into numerous separate classifications. Charter A members, numbering around 7,000 consist generally of journeymen electricians engaged in the fabrication and installation of electrical equipment, while Charter B members, numbering around 8,000, are largely employees of local manufacturers producing electrical equipment. Sole voting power rests in Charter A members, and Charter A membership is entailed for sons and brothers of existing members. Prior to 1928, Local 3 was composed only of the present Charter A members; but the membership now covers virtually everyone working on or producing electrical equipment in any way within the area. Although there are other officers and an executive committee, the nerve center of the union rests in the office of the business manager, who, among other things, has the complete power to select which members shall fill exisitng job vacancies.

The acts constituting the alleged conspiracy in restraint of trade which resulted in the boycott of plaintiffs' products are all elements of an extensive campaign undertaken by Local 3 to organize the electrical industry in New York City. This occurred with the appointment in 1934 of a new business manager, Harry Van Arsdale, Jr., after the depression years of 1931 to 1934 had left building at a standstill in New York City and found the union with only a quarter of its members employed. Thereafter year by year, as the master reports, Van Arsdale fought for, and gradually

obtained for the union members, a reduction in the number of hours of work per week at the basic rate of compensation, as well as an increase in the rate of compensation. Meanwhile the membership of the union greatly increased, so that it was highly successful in unionizing and in obtaining closed-shop agreements in both the local manufacturing and the local contracting branches of the electrical equipment industry. The findings then show that "agreements and understandings" entered into by the three groups—manufacturers, contractors, and union—gave them a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs.

While the boycott as found ran the gamut of electrical equipment from highly complicated switchboards and control devices down to novelty lamp shades, the case of the modern switchboard is offered as typical. There are in New York City a number of companies manufacturing switchboards who, before these activities of Local 3, shared an open competitive market with many of plaintiffs. In return for a closed-shop agreement calling for higher wages and shorter hours for employees, however, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own prices to offset increased production costs. Local 3 carried out its promise with the help of the electrical contractors. It had already won closed-shop agreements from a vast majority of the latter through a series of strikes, threatened strikes, and sympathetic strikes by other unions in the building trade, which threatened to tie up all construction work in New York City. It now secured the further terms that union members should work only on switchboards of local manufacture by union shops, and that the contractors should have the sole power to buy materials for any job, with a proviso as additional protection that only products bearing the union label would be utilized. Like the manufacturers,

the contractors were not averse to the extra expense of union material and labor, when all competition was thus removed from the field.

The contractors, however, went so far as to organize a voluntary Code of Fair Competition, which stipulated that every contractor should file with the code committee (upon which two officials of the union sat) every bid made by him on any work authorized in New York City, that he must include in his bid 35% of the labor cost for overhead, 10% of the materials' cost for commission, and 6% of the total for management, with price cutting penalized by substantial fines. This code was a part of the union contract with several contractor associations in 1935, but it was disapproved by the International President of the I. B. E. W. and the record is not entirely clear whether thereafter it remained a part of the union contract until the contractors themselves gave it up in 1939.[2] At any rate, it is found that the union filed no complaints under the code and did not share in the fines or itself take any action against a contractor or cause its members to refuse to stay in the employ of disciplined contractors.

In other fields, with respect to other items of electrical equipment, a similar situation was found to prevail. Only when no local unionized manufacturer made an article was its use permitted; and in such cases, if at all feasible, it was required either that the article come from the manufacturer "knocked down," to be put together by union labor, or that the finished article be unwired and rewired upon receipt. For years it has been more economical for the manufacturer to wire at the factory such articles as lighting fixtures and control equipment; but the union required the wiring to be done by its own members on the job, even

2 The master's opinion states only that there was a sharp conflict in the evidence; the findings, however, are general and conclusory to the effect that the union was bound by the code.

though, in the case of control equipment, the manufacturer had to complete the wiring before shipment for testing purposes. Curiously, a similar requirement was also in force with regard to some equipment manufactured by Local 3 members in closed Local 3 shops. Switchboards, for example, had to be "knocked down" at the factory and reassembled at the job.

All in all, the situation disclosed by the findings is that of an entire industry in a local area, quite dominated and closed to outsiders by a powerful union, whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose copartners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition. This has been accomplished by the traditional labor weapons of refusal to work upon disfavored goods, with peaceful and non-violent[3] persuasion, picketing, and blacklisting, and now the active participation of the local employers. The boycott, however, is virtually complete against manufacturers, such as plaintiffs, who have no working agreements with Local 3. It makes no difference that most of plaintiffs are located without the jurisdiction of Local 3 and hence could never bargain collectively with it in any event, or that some of plaintiffs are already working under harmonious agreements with other unions. Moreover, as must be expected in cases where a local area is thus closed to outside products, the persons injured will include not only the excluded manufacturers and rival

3 The absence of violence is significantly emphasized by the finding that "Local No. 3 has encouraged disorder and lawlessness on the part of its members in connection with the above activities by guaranteeing them bail and counsel furnished at the expense of the union in case of their arrest" and has so spent sums for bail and counsel fees for members, as well as by a specific finding that there was no evidence of any violence or any threat of violence against any of the plaintiffs by any of the defendants.

unions, but also—at least initially and very likely continuously—the consuming public, which must pay higher rates (as, indeed, it must also for raising of wages and lowering of hours of work) and does not receive the benefits of improved machinery or methods of operation. Thus it appears that general electrical work and equipment are costly in New York City, and instances are cited where equipment of plaintiffs was turned down for local equipment with the union label at twice or three times the cost. Since the lowest bidder no longer gets city contracts, if it be not a union bid, the city has lost federal grants, which were premised upon acceptance of the lowest bid. An outstanding example of the consequences from this type of economic warfare to third persons is that of one local manufacturer which has two price lists for its products, one for union use within the city at more than twice the price of the other for use without the jurisdiction.

This is only a brief, but, as we believe, a presently adequate, summary of the many pages of record devoted to a statement of the facts. The industry of counsel and of the special master is to be commended; but we are constrained to say that the very verbosity and superfluity of the findings have not aided decision as much as doubtless had been expected. We have had occasion to point out recently that findings, prepared after decision by winning counsel, even though accepted by the court, are not as helpful as the trier's own original views; and this is particularly true when the findings are lengthy and repetitious. *Matton Oil Transfer Corp.* v. *The Dynamic,* 2 Cir., 123 F. 2d 999, 1001; *United States* v. *Forness,* 2 Cir., 125 F. 2d 928, 942, certiorari denied *City of Salamanca* v. *United States,* 316 U. S. 694; *Petterson Lighterage & Towing Corp.* v. *New York Central R. Co.,* 2 Cir., 126 F. 2d 992, 996; *cf.* Preliminary Draft of Proposed Amendments to Rules of Civil Procedure for the District Courts of the United States, 1944, p. 59.

Here there is an added difficulty in the incorporation of all the findings in the judgment and their inclusion by express statement in the declaration of invalidity and by implication in the prohibition of the injunction. Doubtless this was done to satisfy requirements that an injunctive order must set forth the reasons for its issuance and describe in reasonable detail the acts to be restrained, Federal Rule 65(d), continuing 28 U. S. C. A. §383, *cf.* 29 U. S. C. A. §109; but a multiplicity of words is as little revealing as a dearth of words. Labor union officers and members are entitled to a more direct and succinct statement of the illegalities of which they are held guilty and which they must cease under penalties of fine and imprisonment. This basic requirement assumes the greater importance here because the course of decision below has left the case not free of ambiguity on a crucial feature. For, as we shall point out, recent decisions have conceded labor unions quite broad powers to refuse to work and to employ peaceful persuasion, but have left open the effect of combinations or conspiracies of unions with non-union elements, particularly for non-union objectives. Thus the nature and purpose of the conspiracies here may quite possibly be the crux of the case.

This ambiguity as to the importance here of the element of conspiracy with non-labor groups—as against other more traditional labor-union activities—apparently stems from a real change in emphasis as the case progressed. Indeed, such a change was but natural, if not necessary, because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation. In the original complaint of 1935 the stress is on union power which has forced the contractors to employ only union labor and "through their [defendants'] said control over said electrical contractors" has coerced the latter not to purchase electrical equipment wired or assembled wholly or partly by non-

union men outside the Metropolitan Area. And the prayer for injunction—important because it is, except for limited additions hereinafter noted, the injunction ultimately granted—was against the inducing of persons not to work upon plaintiffs' products, with no direct prohibition of conspiring with non-union groups and indeed no reference to such groups unless possibly under the vague term "confederates." Significantly, no non-union co-conspirator was joined as a party defendant and none has since been added. The expanded, amended complaint of 1937 does set forth at considerable length allegations of contracts with the electrical contractors who, however, were said "to have been and now are, forced, compelled and coerced by Local 3 to enter into" these contracts for the conduct of their business in the Metropolitan Area and restricting their choice as to the manufacturers from whom they would make their purchases of electrical equipment. And the requested form of injunction remained as in the complaint. The master's opinion stressed the union's economic power, which had not merely obtained higher wages and shorter hours of labor, but had brought submission and then complaisant and active participation from the local employers. The voluminous findings filed in 1942 make much more of the conspiracy, or conspiracies; and several conclusory findings allege an intent to give the local manufacturers and contractors power to control the market and the market price. The injunction as granted, however, accepts, with slight and unimportant changes of wording, the original eight subparagraphs as prayed for in the complaint, and merely adds two more: a 9th against making, carrying out, or seeking to secure the observance "of agreements or understandings with contractors, manufacturers, or others, restraining, hindering or preventing" the purchase or use of plaintiffs' electrical equipment on the ground that it was not made in New York City or worked on by members of Local 3 or was in com-

petition with equipment made by manufacturers employing members of Local 3; and a 10th against "any action whatsoever" hindering the purchase or use of plaintiffs' equipment on the same grounds as stated in the 9th. The broad scope of the injunction is such as to reach peaceful attempts by the defendants—among whom are included the individual officers of the union—to induce any person (thus even a union member) not to deal with plaintiffs, while it is most doubtful if the unnamed "confederates" are reached at all. *Cf.* Federal Rule 65 (d), *supra*.

Nevertheless, on any judicious view of the case, we do not believe the motive or intent of defendants can be at all in doubt; and we are left only to appraise its legal validity and effect. That the union and its officers were acting wantonly, corruptly, or even benevolently for the mere benefit of their copartners, and were not at all times acting for what they conceived to be the self-interest of the union and its members, is nowhere asserted, but is negatived by the general import of all the findings and explicitly by several, of which Finding 361 is typical. That finding, after stating that the defendants and those acting in concert with them were "in no way concerned with the working conditions, rates of wages or union affiliations of the employees in plaintiffs' factories outside the Metropolitan Area," continues: "The ban on the plaintiffs' products is and has been imposed and maintained by the aforesaid combination of the defendants, the local union contractors and the local union manufacturers, solely because the plaintiffs do not, or because of their geographical location outside the Metropolitan Area cannot, employ members of Local No. 3 in their factories outside the Metropolitan Area." In other words it was a make-work campaign for the benefit of union members.

For half a century and against strong popular, political, and legislative pressure, the courts struggled to resolve the anomaly of applying a statute forbidding combinations in

restraint of trade to a social organism which must depend on united effort for its existence and upon at least certain restraints of trade as a reason for its being. Finally, at long length the Supreme Court boldly announced what must be taken as an abandonment of the attempt. The case which most significantly marks this change is *United States* v. *Hutcheson*, 312 U. S. 219, 231, 236, where the majority of the Court through Mr. Justice Frankfurter made clear that the Sherman, Clayton, and Norris-LaGuardia Acts must be read together as "interlacing statutes" presenting "a harmonizing text of outlawry of labor conduct," and that "the Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act."[4] Hence the test of lawful union activities in the famous Section 20 of the Clayton Act, 29 U. S. C. A. §52—which had been held merely declaratory of existing law in decisions such as

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4 This is one of the most discussed cases of recent times; compare, *inter alia*, Gregory, *The New Sherman-Clayton-Norris-LaGuardia Act*, 8 U. Chi. L. Rev. 503; Steffen, *Labor Activities in Restraint of Trade: The Hutcheson Case*, 36 Ill. L. Rev. 1; Nathanson and Wirtz, *The Hutcheson Case*, 36 Ill. L. Rev. 41; Blum, *Labor Provisions of the Clayton Act Revived*, 29 Geo. L. J. 770; Lippert, *Jurisdictional Dispute Between Labor Unions in Restraint of Trade—Immunity from Prosecution Under Anti-Trust Laws*, 4 U. Det. L. J. 209; Carey, *The Apex and Hutcheson Cases*, 25 Minn. L. Rev. 915; Teller, *Federal Intervention in Labor Disputes and Collective Bargaining—the Hutcheson Case*, 40 Mich. L. Rev. 24; Stockham, *The Hutcheson Case*, 26 Wash. U. L. Q. 375; Notes, 27 Va. L. Rev. 835; 41 Col. L. Rev. 532; 9 Geo. Wash. L. Rev. 724; 3 La. L. Rev. 646; 89 U. Pa. L. Rev. 827; 10 Fordham L. Rev. 268; 26 Iowa L. Rev. 862; 54 Harv. L. Rev. 887

Among helpful discussions of the general problem may be cited Gregory, *The Sherman Act* v. *Labor*, 8 U. Chi. L. Rev. 222; Cavers, *Labor* v. *The Sherman Act*, 8 U. Chi. L. Rev. 246; Schmidt, *Application of the Antitrust Laws to Labor—A New Era*, 19 Tex. L. Rev. 256; Newman, *Restraint of Trade: Labor Disputes and the Sherman Act*, 29 Calif. L. Rev. 399; Tunks, *A New Federal Charter for Trade Unionism*, 41 Col. L. Rev. 969; Gregory, *Union Peacetime Restraints in Collective Bargaining*, 10 U. Chi. L. Rev. 177; Comment, *Labor Activities under the Sherman Act*, 35 Ill. L. Rev. 424.

Duplex Printing Press Co. v. *Deering*, 254 U. S. 443, 16 A. L. R. 196—is now to be given full effect, contrary to the holdings of the earlier cases, as stating permissible union activities in any "labor dispute" within the broad definition of that term of the Norris-LaGuardia Act, 29 U. S. C. A. §113, as applied in cases such as *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, and *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552. Hereafter, following the terms of these Acts, it can no longer be considered illegal for any person or persons, singly or in concert, to cease or refuse to perform any work or labor or peacefully to persuade any person to work or abstain from working, or to cease to patronize any party to such a dispute, or to recommend, advise, or persuade others by peaceful and lawful means so to do. 29 U. S. C. A. §§52, 104. And a labor dispute includes, *inter alia*, "any controversy concerning terms or conditions of employment * * * regardless of whether or not the disputants stand in the proximate relation of employer and employee"; and a case grows out of a labor dispute when it involves persons engaged "in the same industry, trade, craft, or occupation; or have direct or indirect interests therein," whether it is between employers and employees, or employers and employers, or employees and employees, or associations of each, or when it involves "any conflicting or competing interests" of persons "participating or interested" in the dispute. 29 U. S. C. A. §113.

That the Court is now settled in its present view of the inapplicability of the Sherman Act even to labor controversies whose most injurious effects may be to others than the immediate parties is made clear by later important and unanimous decisions. The *Hutcheson* case itself immunized against prosecution under the Act a strike and boycott against a brewery company arising out of a jurisdictional dispute between two unions as to building construction

work being done for it and for its adjoining tenant. Shortly thereafter the Court affirmed dismissals of other indictments, in *per curiam* opinions which merely cited the *Hutcheson* case. *U. S.* v. *Building & Construction Trades Council*, 313 U. S. 539; *U. S.* v. *United Brotherhood of Carpenters & Joiners*, 313 U. S. 539; *U. S.* v. *International Hod Carriers', etc., Council*, 313 U. S. 539, affirming *U. S.* v. *Carrozzo*, D. C. N. D. Ill., 37 F. Supp. 191. The latter case is particularly instructive because, as the opinion below shows, it involved a charge of conspiracy as against unions and their members to prevent the sale and use in the Chicago area of labor-saving machinery (truck mixers) or in the alternative to force the employment of the same number of workmen as before the use of the machinery. Further, the defendants were charged with having obtained "working agreements" with the Chicago contractors to this effect. Finally in the controlling case of *U. S.* v. *American Federation of Musicians*, 318 U. S. 741, the Court affirmed the dismissal in D. C. N. D. Ill., 47 F. Supp. 304, 305, of an action for an injunction brought by the United States against a nation-wide boycott by musicians and their union of recorded music supplanting their services; it did this merely on citation of the Norris-LaGuardia Act and the *New Negro Alliance* and *Milk Wagon Drivers' Union* cases, *supra*. In this case the union comprised "virtually all musicians in the nation who made music for hire"; and it was charged not only with conspiring to prevent the use of "canned music" by radio broadcasting stations, in juke boxes in various establishments, and in the home, but also with accomplishing its purposes through coercion exercised on the record-making companies by notifying them that the union members would not make musical records. Of course, the union was not interested in the working conditions of the employees of the record manufacturers or the radio stations, but was interested in providing work for its

members; and it enforced its boycott in a *national*, not in a purely local, market.[5]

These cases, as well as earlier ones,[6] are too closely similar to the case at bar, indeed going beyond it in some aspects, to permit the broad adjudication of illegality here and the injunction based upon it to stand. That this is a labor dispute within the statutory definition follows from the precedents. If a dispute as to the conditions of work between a union and employers still remains a labor dispute as to third persons interested therein or injured thereby, its complexion is hardly changed by a settlement—possibly only an armistice, not a treaty—between the original parties which hurts the third persons more than did the original controversy. *United States* v. *International Hod Carriers', etc., Council, supra; Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc., supra*, 311 U. S. at page

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5 In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, in denying recovery by a hosiery company for stoppage of its business by a sitdown strike, accompanied by violence, by non-employees of the company, Mr. Justice Stone, speaking for a majority of the Court, held that there must be a cessation of interstate traffic on a substantial scale, and that the purpose or intent of a union was not a decisive factor to a violation of the Act. This test of substantiality of the interruption of interstate commerce was not accepted as ultimately decisive, at least with respect to statutorily permitted labor activities, by the majority in the *Hutcheson* case, though Justice Stone still relied on it as the ground of his concurring opinion. Finally the *Musicians* case by the unanimous Court settled that an effective boycott on even a nationwide scale is not alone adequate.

6 Refusing to interfere, *e.g.*, with picketing by an organization for the advancement of the negro of a grocery discriminating against the employment of negroes, *New Negro Alliance* v. *Sanitary Grocery Co., supra*, or with picketing by a milk wagon drivers union of retail stores selling milk, to reduce or eliminate milk deliveries from the dairies to such stores—of course to the direct benefit of the union members' employees, as well as the members themselves—*Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc., supra*, or with a sitdown strike by non-employees, *Apex Hosiery Co.* v. *Leader, supra*, note 5.

99.[7] The decision in *Columbia River Packers' Ass'n* v. *Hinton*, 315 U. S. 143, 147, strongly relied on by the plaintiffs and the court below, is not to the contrary; for there the controversy was between a processor of fish on the one hand, and independant fishermen and their association, on the other. The Court emphasized that the defendants' desire was "to continue to operate as independent businessmen"; the dispute related "solely to the sale of fish," and hence was unlike those involved in earlier cases, where the employer-employee relationship was "the matrix of the controversy." The fact that some of the fishermen had a small number of employees who were also members of their association did not alter the essential nature of the controversy. So in *American Medical Ass'n* v. *United States*, 317 U. S. 519, 533-536, the professional association was interested solely in preventing the operation of a business conducted in corporate form by Group Health Association, Inc., not in the terms and conditions upon which the latter employed its physicians. Here, however, the defendant union is admittedly a bona fide labor organization; and the "conditions" of the employment of its members by the local manufacturers and contractors are "the matrix of the controversy," indeed the very thing which causes the plaintiffs their injuries.[8]

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7 In the latter case the Court said that the controversy did not cease to be a labor dispute because the plaintiff dairies' employees became organized, for this merely transformed defendants' activities into a conflict which included a controversy between two unions—an aspect present in the case at bar, though not immediately before the court in this action. See note 1, *supra*.

8 *Cf. Donnelly Garment Co.* v. *Dubinsky*, D. C. W. D. Mo., 55 F. Supp. 587, 601; also 42 Col. L. Rev. 702, 1067; 56 Harv. L. Rev. 479; 10 U. Chi. L. Rev. 216. The more limited rule announced under the state statute in *Opera on Tour* v. *Weber*, 285 N. Y. 348, 136 A. L. R. 267, certiorari denied *Weber* v. *Opera on Tour*, 314 U. S. 716, is ably criticized by Lehman, C. J., for the minority; and see also, *inter alia*, 41 Col. L. Rev. 1266, 42 Col. L. Rev. 51, 66-68, 51 Yale L. J. 144, 27 Corn. L. Q. 115, 39 Mich. L. Rev. 665, and 28 Va. L. Rev. 727.

It seems clear, therefore, that the union members may refuse to work upon the plaintiffs' products; and, in view of the position of economic power which the union has now attained, that privilege is for practical purposes an almost complete shield for the defendants' acts which are most injurious to the plaintiffs. For all the other acts charged against the defendants may be barred; and yet if the union can hold its ranks together and keep its members from working upon plaintiffs' products, the Metropolitan Area will still be closed to them. The injunction does not purport to interfere with that privilege directly, though it comes close to doing so in the provisions, clearly too broad, which forbid the union officers from inducing anyone, even members, from thus doing what it and they may legally do. Moreover, peaceful persuasion, even of others, is clearly within the now applicable statutory terms. Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, §20, viz., as restraining Local 3 and its officers "from terminating any relation of employment, or from ceasing to perform any work or labor * * * or from ceasing to patronize * * * any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do." 29 U. S. C. A. §52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendants set forth in the findings.

If the present judgment and injunction must therefore fall, should they be reframed to reach only the asserted conspiracies with the local manufacturers and contractors? Such a result would obviously call for the most discriminating draftsmanship for the injunction, to make quite clear what was still permissible, to avoid all difficulties as to the extent of its reach in view of the failure to include the co-conspirators, and to define the objectionable union pur-

pose and intent which, rather than the consequences of defendants' acts, now would become crucial, though proof adequate to justify enforcement by way of contempt proceedings would be hard to secure. But more important is the fact that such an injunction, though on its face so seemingly far-reaching, would after all be of limited effect. For under it, compliance to the extent of public dissolution of all the agreements would satisfy the legal formalities; but still if the union continued its boycott of plaintiffs' products, conditions would remain substantially as before. Such an inconclusive result can hardly fail to add to the bitterness between the parties; one can easily foresee the almost impossible position of the court in attempting fairly to pass upon the proceedings in contempt which would inevitably follow. We do not think the precedents are correctly interpreted to require an effort so vain and useless.

The doctrine that a union necessarily forfeits the benefits of its statutory exemption from the antitrust laws when it combines with non-labor groups, which has been asserted by some authorities, is rested upon a reading in the most extensive form possible of a limitation noted by Mr. Justice Frankfurter to the doctrine stated in the *Hutcheson* case, as follows: "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under §20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." And then to the word "groups" he dropped a footnote, which reads: "*Cf. United States* v. *Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters." 312 U. S. at page 232. The *Brims* case affirmed the conviction of union members in the Chicago area who refused to work on non-union out-of-state mill work, with the result that an exclusive market

was established for the local manufacturers; and the argument is that by these words of the Court the *Brims* case is still left in unabated force.[9]

Now it is doubtful if Justice Frankfurter intended to define precisely just the extent of the limitation the Court had in mind. There was no necessity for him to do so at that time; and the matter had ramifications which the Court would not be likely to dispose of cavalierly. Hence the excepting sentence doubtless should not be read with exacting literalness; but in view of the use which has been made of it, we should note that it is not a positive affirmation, but a statement of only restricted reach. If its converse is to be accepted as an affirmative, it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose. Such a truism would seem still of undoubted validity; for the *Hutcheson* case did not purport to remove all rulings whatsoever upon labor activities. Thus, acts of violence are not protected by the statutes; nor, in any sound view, should labor union activities be usable merely as a blind or cloak for illegality. Thus, in *Albrecht* v. *Kinsella*, 7 Cir., 119 F. 2d 1003, 1004, 1005, the Court said: "Labor unions as such were here involved only in name—and the name of labor was being used as a shield or blind behind

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9 The *Apex* case, *supra*, note 5, 310 U. S. at page 501, also cites the *Brims* case, but in like reserved language—"a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices." Early comments after the *Hutcheson* case, *supra*, note 4, were inclined to view the exception broadly; and there were some cases in accord, *e.g.*, *United States* v. *Central Supply Ass'n*, D. C. Ohio, 40 F. Supp. 964; *United States* v. *Associated Plumbing & Heating Merchants*, D. C. Wash., 38 F. Supp. 769. Later comment and decision have been more restrained, *cf.* note 10, *infra*.

which a venal group was hiding and at the same time levying tribute upon industry, business, and home builders. * * * When officials of the labor union step outside their union labor fields and act as highway men, levying tribute on those who wish to build homes or other buildings, acting for their individual gain, the immunity granted to labor unions under the amendment to the Sherman Act does not extend to them." And the court went on to say: "The test is whether the activity complained of is one promotive of, and within the scope of, the legitimate objects of a labor union or whether the union is being misused by those holding official position or positions of trust therein, who, conspiring for their private and their personal profit, are using the union name to obtain immunity from Sherman Act prosecutions and at the same time shield their misconduct behind an organization whose fair name and activities are likely to mislead a court or jury as well as the public."[10]

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10 See also *United States* v. *Bay Area Painters & Dec. Joint Com.*, D. C. N. D. Cal., 49 F. Supp. 733, 738, saying "it would seem beyond belief" that Congress, having carefully protected the machinery of collective bargaining, would then after the bargain has been made withdraw that protection and leave the parties liable for prosecution for criminal conspiracy, and distinguishing *United States* v. *Lumber Products Ass'n*, D. C. N. D. Cal., 42 F. Supp. 910, affirmed in part, 9 Cir., Aug. 23, 1944, —— F. 2d —— ; and *cf. United States* v. *B. Goedde & Co.*, D. C. Ill., 40 F. Supp. 523, and comments in 9 U. Chi. L. Rev. 342 and 16 U. Cin. L. Rev. 51, and the earlier case of *Local 167* v. *United States*, 291 U. S. 293. See also discriminating discussion in Gregory, *op. cit. supra*, note 4, 10 U. Chi. L. Rev. at pages 187-190; Tunks, *op. cit. supra*, note 4, 41 Col. L. Rev. at pages 1011-1013; 42 Col. L. Rev. 1067, 1070-1071; 40 Mich. L. Rev. 1244; *cf.* Merritt, *Two Federal Legislatures*, 30 A. B. A. J. 371, 380. Compare also the suggestion in Boudin, *Organized Labor and the Clayton Act*, 29 Va. L. Rev. 272, 395, that, when the union is used for the mere benefit of non-labor groups, then the union officers, and not the union, should be liable.

The *Lumber Products* case, *supra*, was an extensive prosecution of various trade associations, corporations, and individuals comprising the "Manufacturer Group," and various trade councils, unions, international and local, and officers and agents comprising the "Union Group" who were charged with having entered into a

It seems to us that this is the distinction the Supreme Court had in mind in its reference to the *Brims* case, and that the latter cannot now be held as broadly applicable as perhaps it was originally. As one commentator puts it, the *Brims* case "should be deflated to its position as one of a line of cases uncritically condemning refusal to work on non-union products delivered in interstate commerce"—a position no longer tenable in the form stated—and that "when the union is permitted to act alone, an agreement with employers should not automatically add the condemnable virus." Tunks, *A New Federal Charter for Trade Unionism,* 41 Col. L. Rev. 969, 1012.[11] This distinction seems to us the logical deduction to be made from the present state of Supreme Court decisions, and to be consistent with the statutes upon which the Court relies, and which

written agreement, following a demand in 1936 for a wage increase, to shut out from the San Francisco area all millwork and patterned lumber produced outside the area, although at least 80% had previously come from without the state, chiefly from Washington and Oregon. Indictments having been sustained, the "Manufacturer Group" pleaded *nolo contendere* and the union groups were found guilty by a jury after trial. Upon appeal the convictions were sustained (except as to three individuals), the court holding the agreement one not to secure any legitimate advance of the laborer's interest, but to extort a "capital levy on the home builder" and a "monopoly price tribute from the consumer" and, relying upon the *Brims* case, to the effect that labor and the employer may not agree to give the latter a monopoly price-fixing contract and thereafter "split the take." Hence the history, the scope, and the purpose of the fixed written agreement, as stated by the court—all tend to differentiate that case from the present (compare the *nol prossing* of indictments, as stated in note 1, *supra*), while the present issue of framing an injunction of fixed regulation of future union activities differs markedly from that of finding evidence to sustain a jury's verdict of guilt. Nevertheless, with deference one may question the present extent of the *Brims* doctrine as here restated, or the view that a labor dispute loses its character as such as soon as a collective bargain is made. Compare the views of the same district judge in the *Bay Area Painters* case, *supra*.

11 For like comments, see note 10, *supra*.

do not in terms exclude business-labor combinations, but, as we have seen, do extend the inclusive labor dispute to include employment interests not themselves primarily engaged in a controversy as to terms and conditions of employment. On this basis it would follow that here the activities which cannot be forbidden to Local 3 acting by itself are not to be interdicted because other groups join with them to the same end.

That the present state of the authorities is such as to leave the harshness of the economic struggle to bear with unusual weight upon the consuming public has been the conclusion of commentators who have urged legislative action to check some of the abuses of power which exist.[12] But the making of ground rules for business competition is difficult in any case, as shown by current discussions of such matters as patent monopolies and the issue of compulsory licensing to prevent the use of patents to retard new inventions; and the problems are immeasurably increased with the addition of the explosive elements of attempted regulation of organized labor. Indeed, advocates of legislative reform seem not agreed as to whether it should take the course of external controls of conduct towards third persons or internal regulation of union affairs. The determination of such questions of policy is, of course, no proper function of the courts; we mention the matter to indicate that we are not unaware of the disturbing consequences to the parties involved of judicial non-interference which, however, in the light of experience seems likely to be less costly to stable social institutions than judicial attempts to re-

12 As in Gregory, *op. cit. supra*, note 4, 10 U. Chi. L. Rev. 177; Teller, *op. cit. supra*, note 4; 9 Geo. Wash. L. Rev. 948-961; 41 Col. L. Rev. 529, 532; 49 Yale L. J. 518, 534; and the series of Ross Prize Essays in 28 A. B. A. J. 385, 471, 531, 594. But *cf.* Tunks, *op. cit. supra*, note 4; Shulman, *Labor and the Anti-Trust Laws*, 34 Ill. L. Rev. 769.

solve these problems without the aid of, if not contrary to, legislative direction.

Judgment reversed and action dismissed.

SWAN, *Circuit Judge*, dissenting:

I do not read the Supreme Court cases as requiring us to hold that none of the conduct of the appellants, as found by the special master and the district court, can be deemed a violation of the anti-trust laws. The members of a labor union are privileged to agree among themselves upon a boycott, although the effect of it may be to restrain interstate commerce, when the purpose of their boycott is to make work for themselves, or improve working conditions or strengthen their union as against a competing union; but I do not think it has yet been held that they may agree with their employers to enforce a boycott for the very purpose of restraining commerce and increasing the price of articles manufactured or dealt in by their employers within a local market area. As I read the findings of fact the case at bar falls within the latter classification. Among the findings supporting this view the following may be quoted:

> "353. The combination and conspiracy hereinbefore described was intended to and did give the local union manufacturers power to control the market price of their products as a result of their monopoly and was intended to and did give the union contractors exclusive purchasing rights to all electrical equipment for installation and contracts involving larger sums of money wherewith to add to their profits."
>
> "359. The purpose of the defendants and those participating with them, in conducting the boycott is, in so far as is practicable, to exclude from the New York

City market all electrical equipment unless it is manufactured or built by members of Local No. 3, employed by either local union manufacturers in the factory or by local union contractors on the job where the equipment is to be installed."

"366. All the acts of the defendants and those acting in concert with them were calculated and intended to prevent and destroy all interstate commerce in electrical equipment of such kinds as can be and are manufactured by local union manufacturers or built on the job by local union contractors in order thereby to secure a monopoly for the members of Local No. 3 and for their employers, the union electrical contractors and the union electrical manufacturers, of the work of manufacturing in whole or in part such types of electrical equipment to be used in the City of New York."

"368. A desire or intention by the conspirators to bring about any modification of the standards or terms of wages, hours, or working conditions, or employment relations maintained by the plaintiffs, or any of them, in any of their factories outside the Metropolitan Area, did not in any way motivate the conspirators in boycotting the plaintiffs' products."

In my opinion the facts found by the trial court make applicable the principle of *United States* v. *Brims*, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and a carpenters' union. Neither the Clayton Act nor the Norris-LaGuardia Act has rendered that case obsolete, as recent opinions of the Supreme Court plainly show. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 501; *United States* v. *Hutcheson*, 312 U. S. 219, 232. The eighth circuit has just applied the rule of *United States* v. *Brims* to facts very similar to those

of the case at bar. *Lumber Products Assn.* v. *United States,* decided August 23, 1944. I think that we should likewise apply it. Until the contrary shall be authoritatively determined, I am unwilling to believe that the congressional legislation exempting labor unions from injunctions was intended to go so far as to permit employers and employees to combine to do what neither the City of New York by municipal ordinance nor the State of New York by legislative fiat could lawfully do, namely, exclude manufactured articles from the local market merely because they were manufactured outside the state. I agree with my colleagues that the injunction was granted in term too broad, but I cannot agree that no injunction whatever is permissible or that the prayer for a declaratory judgment should be denied. I therefore dissent from dismissal of the complaint.

[fol. 330] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 13th day of November one thousand nine hundred and forty-four.

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand, Hon. Charles E. Clark, Circuit Judges.

ALLEN BRADLEY COMPANY, et al., Plaintiffs-Appellees,

v.

LOCAL UNION No. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al., Defendants-Appellants

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed with costs, and action dismissed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 331] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Allen Bradley Company, et al., v. Local Union No. 3, International Brotherhood of Electrical Workers, et al. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 13, 1944. Alexander M. Bell, Clerk.

[fol. 332] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 333] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 2, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for hearing immediately following No. 675, Boorman Lumber Co. vs. United States.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

No. 708

NOV 24 1944

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ALLEN BRADLEY COMPANY, ALLIS-CHALMERS MANUFACTURING COMPANY, CLARK CONTROLLER COMPANY, COLT'S PATENT FIRE ARMS MANUFACTURING COMPANY, CUTLER-HAMMER, INC., THE ELECTRIC CONTROLLER & MANUFACTURING COMPANY, GENERAL ELECTRIC COMPANY, MONITOR CONTROLLER COMPANY, SQUARE D COMPANY, TRUMBULL ELECTRIC MANUFACTURING COMPANY and WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY,

Petitioners,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BERT KIRKMAN, individually and as President thereof, WILLIAM BECK, individually and as Treasurer thereof, HUGH MORGAN, individually and as Assistant Business Manager thereof, GEORGE W. WHITFORD, individually and as Recording Secretary thereof, JACOB S. SOLOMON, individually and as Business Agent thereof, and GERALD DUFFY, individually and as an Agent thereof,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

WALTER GORDON MERRITT,
Counsel for Petitioners,
40 Wall Street,
New York, N. Y.

APPELLATE LAW PRINTERS, INC., NEW YORK CITY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ALLEN BRADLEY COMPANY, ALLIS-CHALMERS MANUFACTURING COMPANY, CLARK CONTROLLER COMPANY, COLT'S PATENT FIRE ARMS MANUFACTURING COMPANY, CUTLER-HAMMER, INC., THE ELECTRIC CONTROLLER & MANUFACTURING COMPANY, GENERAL ELECTRIC COMPANY, MONITOR CONTROLLER COMPANY, SQUARE D COMPANY, TRUMBULL ELECTRIC MANUFACTURING COMPANY and WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY,

Petitioners,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BERT KIRKMAN, individually and as President thereof, WILLIAM BECK, individually and as Treasurer thereof, HUGH MORGAN, individually and as Assistant Business Manager thereof, GEORGE W. WHITFORD, individually and as Recording Secretary thereof, JACOB S. SOLOMON, individually and as Business Agent thereof, and GERALD DUFFY, individually and as an Agent thereof,

Respondents.

COME NOW your petitioners above named by Walter Gordon Merritt, their counsel, and move this Honorable Court that it shall, by certiorari or other proper process directed to the Honorable United States Circuit Court of Appeals for the Second Circuit, require said Court to cer-

tify and remove to this Court, for its review and determination, a certain cause lately pending in said Court, wherein your petitioners were plaintiffs-appellees and the respondents were defendants-appellants, and to that end your petitioners now tender herewith their petition with a certified copy of the record in said cause.

WALTER GORDON MERRITT,
Counsel for Petitioners.

Dated at New York City,
November 22nd, 1944.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Your petitioners respectfully show to this Court:

Parties and History of the Proceedings.

1. Petitioners are corporations organized and existing under the laws of some State of the United States.

2. Respondents are Local No. 3, International Brotherhood of Electrical Workers, a voluntary association of workingmen employed in the electrical industry in the City of New York and vicinity, and certain individual officers or representatives of said Union.

3. This action was commenced in the United States District Court, Southern District of New York, on December 9, 1935, seeking a declaratory judgment pursuant to Sec. 274 (d) of the Judicial Code (28 U. S. C. A. § 400) declaring certain activities of the defendants to be a violation of the federal anti-trust laws and asking for an injunction as further relief under said section.

4. Pursuant to stipulation, the case was referred on July 1, 1937, by order of the District Court, to John Kirkland Clark, Esq., as Special Master, to hear and determine all issues of law and fact therein and report to the Court. In October, 1937, the parties proceeded to trial before the Special Master, which trial, with adjournments and intermissions, was concluded on March 7th, 1940. It involved over 200 sessions and 25,000 pages of testimony, exclusive of 1,700 exhibits. The Special Master filed his opinion on October 2nd, 1941 (pp. 80-134) (reported 41 F. Supp. 727), and filed his findings of fact and conclusions of law on November 23rd, 1942, holding for the plaintiffs (p. 135).

Hearings before Honorable FRANCIS G. CAFFEY, Judge of the United States District Court, Southern District of New York, on motion to confirm said report and on defendants' objections thereto occupied 22 days, between March 1, 1943 and June 10, 1943. Said findings and conclusions of law were adopted by the Court with some minor modifications (pp. 135-154) and the opinion of the District Court in petitioners' favor was rendered orally on June 10, 1943 (pp. 155-173) (51 F. Supp. 36). On September 23, 1943, the final decree and declaratory judgment was entered (pp. 173-295), and on September 24, 1943 the writ of injunction issued (pp. 296-300).

5. The defendants thereupon filed their appeal to the United States Circuit Court of Appeals for the Second Circuit on December 14, 1943 (on the findings and conclusions without bringing up the evidence), and the appeal was heard by the said Court on May 10, 1944, which rendered its opinion on October 12, 1944, reversing the judgment and dismissing the action, SWAN, J. dissenting.

Jurisdiction.

The jurisdiction of this Court is based on Sec. 240 (a) of the Judicial Code (28 U. S. C. A. §347) as amended by the Act of February 13, 1925.

Statement of Facts as Found.

(References are to the numbers of the findings, pp. 175 to 286.)

There are four commercial groups involved in this trade picture:

1. Petitioners are manufacturers of electrical equipment which seek to market part of their products in New York City for installation and use in New York City build-

ings (1 to 84). Generally speaking their factories are outside of New York State and outside of the territorial jurisdiction of Local 3 (85, 96, 361), so that they cannot deal with Local 3 (85, 96) in respect to labor relations, but the largest of them have collective bargaining agreements with other unions (4, 20, 21, 32, 38, 60, 68, 71, 73).

2. Respondent, Local Union No. 3, with jurisdiction limited to New York City and vicinity, and a membership of some 15,000, comprises (a) employees of union electrical contractors, who install electrical equipment in buildings, and (b) employees of local manufacturers, who produce electrical equipment for buildings (86-139).

Local 3 is a closed union and the right to become a member through apprenticeship is entailed for sons and brothers of existing members (125). It is highly autocratic in its government (106-124).

3. Local Union Electrical Manufacturers, competitors of petitioners for the New York City market, operate in New York City under closed shop agreements with Local 3. These manufacturers—or at least some of them—unionized upon condition that Local 3, through its control of installation work, would "deliver" the New York market to them and prevent outside competition (329, 168-72). Concerning this group, the majority opinion of the Circuit Court of Appeals says (p. 309):

> "In return for a closed shop agreement calling for higher wages and shorter hours for employees, however, Local 3 promised these local companies an exclusive market for switchboards within the city, so that they could name their own prices to offset production costs."

(See also findings 184-7, 257, 265, 300-2, 314, 349-61, 364-6.)

4. Local Union Electrical Contractors, herein called "contractors," operating under closed shop agreements

with Local 3, purchase and install electrical equipment in New York City. Local No. 3 permits no other electrical contractors to do substantial work in New York City (188-227) and completely dominates and controls the contractors (217, 222-7). Local 3 also determines which contractors may operate as union contractors (219-26) "by refusing to admit certain additional contractors within the group where it would result in competition with those already in it" (219). Again there is a closed ring.

The Trade Affected is the sale by the petitioners to the contractors in New York City of lighting fixtures, low tension switchboards, signalling equipment, panel boxes, control equipment, switches (other than toggle), high tension cables, armored BX cable, wire, outlet boxes, branch circuits and feeders (345, 228-30), herein called "Electrical Equipment." The annual volume of such purchases by said contractors is about $10,000,000 (229).

The Means employed to destroy petitioners' commerce is a boycott made effective through the monopolistic control maintained by Local 3 and the contractors over electrical installation work involving the use of products of the types which are boycotted. This boycott is carried on by Local 3 in combination with the contractors—the purchasers and installers of said products—and local manufacturers, producers of such products formerly competing with petitioners (346). All electrical equipment is required to be manufactured, purchased and handled and finally installed by members of this tripartite alliance. Adherence to these restrictions is secured through the mixed inducements of commercial rewards and punishments (346, 353, 356, 358, 181, 230, 245, 257, 300, 302, 333-41, 154, 219-20).

Summarizing this situation the Circuit Court of Appeals said (p. 311):

> "All in all, the situation disclosed by the findings is that of an entire industry in a local area,

quite dominated and closed to outsiders by a powerful union, whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose copartners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition."

Finding 353, among many other findings states the purpose and effect of the combination:

> "The combination and conspiracy hereinbefore described was intended to and did give the local union manufacturers power to control the market price of their products as a result of their monopoly and was intended to and did give the union contractors exclusive purchasing rights to all electrical equipment for installation and contracts involving larger sums of money wherewith to add to their profits."

While it appears that the contractors dare not resist the union, it also is found as a fact that they actively and affirmatively participated in the boycott for their profit (333-41).

A written agreement, executed in March, 1935, to settle a building trades strike during the construction of Rockefeller Center in New York City, enlisted others than the electrical industry in the boycott. The parties were Local 3, The New York Electrical Contractors Association, Association of Contracting Plumbers of the City of New York, and Heating, Piping and Air-Conditioning Contractors, N. Y. C. Assn., Inc., and Sprinkler Contractors, and the agreement prescribed that certain electrical control equipment—of a type which did not interest the local manufacturers—should be assembled and wired by the contractor on the job. It prevented interstate commerce in the finished product and transferred this business of building this equipment from the petitioners' factories in other

states to the contractors on the job site (275-291). It trebled the cost (291-293), and undermined efficiency, economy and fire insurance protection (291-307). In two jobs alone the extra costs of disassembling and unwiring and reassembling and rewiring were respectively $17,500 and $5,800 (293).

The findings also show in detail the extent to which interstate commerce has been restrained and destroyed and prices increased in respect to lighting fixtures (231-57), switchboards (168-87), switches (263-6), control equipment (267-307), signalling apparatus (308-14), wire and cable (315-20) and other lines of equipment (321-8). The cost of wiring and assembling lighting fixtures has increased four to eight times (251).

The Westinghouse Electric & Manufacturing Company bid $56,000 for the panel boards and switchboards to be installed in the Ten Eyck Low Cost Housing project but was informed "it could not have the job at any price, because the product did not bear the union label," and the order went to a local union manufacturer for $110,934 (183). Unlabelled products "cannot be sold at any practical price" (187).

Several findings deal specifically with the increased prices imposed on the public:

> "Some union manufacturers of outlet boxes and switches located in New York City, and working under agreement with Local No. 3, issued from time to time two different price lists for the same products, one containing prices for their products without the union label for the solicitation of business in unprotected areas where free and open competition must be met, and another containing a price list on a different colored sheet, covering the same products, made by the same employees in the same factory, with the union label, for the solicitation of business in the protected area in New York

City and the Metropolitan area, and in some instances, the prices for the protected area have been more than double the prices charged for the same items in the unprotected area" (349). (See also 266.)

"In one case in 1935, a supply house charged a union electrical contractor for a meter pan, manufactured by a union electrical manufacturer with a union label thereon the sum of $5.40 which sum was more than the basic price of the article itself without the union label thereon, which was $2.40" (350).

"In most cases, the prices charged the New York City union electrical contractors for electrical equipment and material obtained from the local union manufacturers have been, and at the time of the trial were, materially higher than the prices at which such contractors could purchase similar or identical equipment and material from the plaintiffs or from other manufacturers not employing members of Local No. 3" (351).

"Said higher prices charged by said local union manufacturers for the sale of products to be used in New York City are due to the barriers which the boycott practices of Local No. 3, aided, abetted and participated in by the local union electrical contractors and local union electrical manufacturers, have established to prevent manufacturers outside of the City of New York from competing with local union manufacturers in the City of New York for the sale of products to be used in the City of New York, and to create and maintain a monopoly in the Metropolitan Area for electrical products manufactured in factories employing members of Local No. 3" (352).

The respondents were not seeking in any way to bring about any change of conditions of employment in the petitioners' factories (360-1, 368-9). The ban on petitioners' products is an absolute ban and there is nothing petitioners

can do, by way of changing conditions of employment, to avoid it (360-1). The subject matter of this suit does not involve or grow out of a labor dispute (363, 367-9).

The petitioners have been suffering, and are threatened with, irreparable damage (347-8).

Questions Presented.

The petitioners desire to have this Court review the question as to whether or not the trade combination described in the findings of fact is in violation of the Sherman Anti-Trust Law, 15 U. S. C. A., § 1, *et seq.*, and laws amendatory thereof, and if in violation thereof, whether an injunction should issue.

Reasons in Support of Petition.

1. The decision of the Circuit Court of Appeals is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *Lumber Products Association, Inc.* v. *United States,* decided August 23, 1944, 144 F. (2d) 546. In the case at bar the Special Master, the District Judge, and one of three Circuit Court Judges have decided in favor of the petitioners, and two Circuit Court Judges have decided in favor of the respondents.

2. A majority of the Circuit Court of Appeals has decided the Federal question involved in a way which conflicts with the applicable decisions of this Court. The majority opinion found it necessary to state, in effect, that this Court did not mean to reaffirm the case of *United States* v. *Brims,* 272 U. S. 549, and that the language of this Court in the case of *United States* v. *Hutcheson,* 312 U. S. 219, "should not be read with exacting literalness." It failed to give effect to the principles laid down by this Court that the exemptions granted labor under the anti-trust laws do not apply when labor is dealing with non-

labor objectives (*Apex Hosiery Company* v. *Leader*, 310 U. S. 469; *Columbia River Packers Association* v. *Hinton*, 315 U. S. 143) or when it combines with non-labor groups (*United States* v. *Hutcheson, supra*).

On the contrary, the majority opinion of the Circuit Court of Appeals in the case at bar says (p. 326):

> "On this basis it would follow that here the activities which cannot be forbidden to Local 3 acting by itself are not to be interdicted because other groups join with them to the same end."

3. Congress has frequently exercised its control over interstate commerce for the purpose of securing enforcement of both Federal and state laws. It is not to be presumed, therefore, the Congress has so exercised its control as to deprive people of their rights under another Federal act. To say that products made under union relationships required by the National Labor Relations Act shall not flow in interstate commerce,—because not made under different union relationships impossible of attainment,—deprives the journeymen who produce the banned products of their rights under the National Labor Relations Act (see *U. E. R. M. W. A.* v. *I. B. E. W.*, 2 Cir., 115 F. [2d] 488), as well as their Federal rights to produce for interstate commerce. Can it be possible, for illustration, that employers and employees in New York City may unite to prevent the importation of goods because they were manufactured in accordance with the requirements of the Fair Labor Standards Act?

4. The public injury involved is recognized in the opinion of the Circuit Court of Appeals and the fundamental significance of the principle involved calls for special discussion in this petition.

Fundamental Significance.

One of the major purposes of our national existence, for which the Constitution was adopted, is the maintenance of a national economy free from trade barriers, and no attempt to destroy that national area of free trade should escape condemnation.

The avowed purpose of this monopoly being sectional and territorial in character—and having no relation to labor standards or class alignment—is an undisguised attempt, within its scope, to relegate the New York City market to a condition of economic isolation.

While mankind strives to raze trade barriers as between nations, and thus to enlarge the area of free trade in the cause of human betterment, these monopolists erect barriers within the very confines of the nation and thus seek the disintegration of our national economy.

Since neither city, state nor Federal government has the power by legislation to authorize the creation of such trade barriers or the allocation of territorial markets, no court should read into the Federal Anti-Trust Act a sanction for private persons so to do. Such an interpretation, we submit, would destroy the constitutionality of the Act.

If a group of citizens in New York City may bar the entry of union-made equipment coming from Philadelphia, St. Louis, Detroit or Chicago—as is undisputed in this case—these offended cities will retaliate in self-defense and the nation will be Balkanized.

Where the discrimination or restraint is based on the extraterritorial origin of the goods and not upon terms or conditions of employment, it is against any conceivable public interest to contend that a Constitutional purpose essential to our existence as a nation must be discarded for the benefit of a group of producers and workers in a single city.

Already as a stated result of the recent decision in this case, real estate agents are soliciting outside electrical industries to locate within the New York City area, on the ground that only by so doing may they enjoy the protected metropolitan market.

Such an embargo on extraterritorial products causes great public injury. It artificially promotes undesirable congestion in large cities and taxes the public by increasing living costs.

In this case labor unions—which are the exempted group under our anti-trust laws—unite with employers, who are the non-exempted group. Does the exemption extended to labor carry over to the non-labor group or do the prohibitions imposed on the non-labor group carry over to the labor group? Surely all engaged in a common enterprise must have the same standing, for otherwise equality before the law is lost and the fundamental principles of conspiracy law, visiting equal blame on all, are overthrown.

This controversy does not arise out of a labor dispute or any conflict between horizontal classes; it is a conflict between vertical and sectional segments of society. The respondents assert no controversy with the petitioners, and their relation to local employers is one of collusion and cooperation.

The boycott in this case is a dictatorial and undemocratic boycott, which denies to the public its sovereign right of choice or right of commercial suffrage, and should be distinguished from a boycott where there is a public appeal for the voluntary exercise of the force of public patronage. Journeymen and employers producing in any state, in conformity with the requirements of Federal and state law, are entitled to offer their products for sale in all states, leaving the public to decide what it wishes to buy.

Conclusion.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of, and under the seal of, this Court to the United States Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Honorable Court a full and complete transcript of the record and all proceedings in the within cause and to stand to and abide by such order and direction as to your Honors shall seem meet, and the circumstances of the case require, and that your petitioners may have such other and further relief or remedy in the premises as to this Court may seem proper.

WALTER GORDON MERRITT,
Counsel for Petitioners,
40 Wall Street,
New York, N. Y.

Dated, November 22nd, 1944.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 702

ALLEN BRADLEY COMPANY, et al.,

Petitioners,

v.

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.,

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

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IN THE

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Petitioners,

v.

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.,

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONERS

The action was commenced in the District Court for the Southern District of New York on December 9, 1935, seeking a declaratory judgment pursuant to Section 274(d) of the Judicial Code (28 U. S. C. A., sec. 400), declaring the activities of the defendants to be a violation of the Federal anti-trust laws and asking for an injunction as further relief under said section. By stipulation the issues of law and fact were first tried before a Special Master.

The opinion of the Special Master sustained the contentions of the plaintiffs (41 F. Supp. 727, Rec., pp. 80-134). The District Court, confirming the Master's report, granted the relief prayed for (51 F. Supp. 36; Rec., pp. 155-171). The defendants appealed on the pleadings, the findings and

the judgment, and the Court of Appeals reversed and dismissed the action, Swan, J., dissenting (145 F. (2d) 215; Rec., pp. 305-329). On application of the petitioners, herein called plaintiffs, this Court, on January 2, 1945, granted certiorari.

The original record of over 25,000 pages of testimony and some 1700 exhibits, submitted to the Special Master, has been packed into 374 findings (pp. 175-286). Only a minority of them will be referred to but they constitute an amazing picture of the internal and external operations of a unique local union in a large city and its alliance with employer groups.

Jurisdiction

The jurisdiction of this Court is based on Sec. 240(a) of the Judicial Code (28 U. S. C. A., sec. 347) as amended by the Act of February 13, 1925, and the case involves the application and interpretation of the Federal anti-trust laws.

Statement of Facts

There are four commercial groups involved in the trade picture:

1. *Plaintiffs* are manufacturers of electrical equipment, which seek to market their products in New York City for installation and use in New York City buildings (Findings, 1 to 84, pp. 175-194). Generally speaking, their factories are outside of New York State and outside of the territorial jurisdiction of defendant Local 3 (Findings, 85, p. 195; 96, p. 198; 346, pp. 276-8), so that they cannot deal with Local 3 in respect to labor relations (Findings, 85, p. 195; 96, p. 198). The largest of them have collective bargaining agreements with other unions (Findings, 4, 20, 32, 38, 60, 68, 71, 73, pp. 175-191).

2. *Defendant, Local Union No. 3,* with jurisdiction limited to New York City and vicinity, has a membership of some 15,000, comprised largely of (a) employees of union electrical contractors, who install electrical equipment in buildings, and (b) employees of local manufacturers, who produce electrical equipment for buildings (Findings, 86-139, pp. 195-208).

Local 3 is a closed union and the right to become a member through apprenticeship is entailed for sons and brothers of existing members (C. C. A. opinion, p. 308, Finding, 125, pp. 205-6). It is highly autocratic in its government (Findings, 106-124, pp. 200-5) and ruthless in its operations (Findings, 198-227, pp. 228-39). Its membership "covers virtually everyone working on or producing electrical equipment in any way within the area" (C. C. A. opinion, p. 308, Finding, 95, p. 198) and dominates the "entire industry" (C. C. A. opinion, p. 311).

3. *Local Union Electrical Manufacturers,* competitors of plaintiffs for the New York City market, operate in New York City under closed shop agreements with Local 3. They are co-conspirators but not defendants. These manufacturers—or at least some of them—unionized upon condition that Local 3, through its control of installation work, would "deliver" the New York market to them and prevent outside competition (Findings, 168-172, pp. 217-20). (See also Findings, 184-7, 257, 265, 300-2, 314, 349-61, 364-6.)

4. *Union Electrical Contractors,* herein called "contractors," operate under closed shop agreements with Local 3 and purchase and install electrical equipment in New York City. They are co-conspirators but not defendants. Local No. 3 permits no other electrical contractors to do substantial work in New York City (Findings, 188-227, pp. 225-39), and by written agreement be-

tween Local 3 and this privileged group of contractors no one but these contractors is permitted to purchase the electrical equipment upon which members of Local 3 will work (Findings, 260-2, pp. 249-50). Local 3 completely dominates and controls these contractors (Findings, 217, 222-7, pp. 235-39). Local 3 also determines which contractors may operate as union contractors (Findings, 219-26, pp. 235-9) "by refusing to admit certain additional contractors within the group where it would result in competition with those already in it" (Finding, 219, p. 236). Again, there is a closed ring.

The Trade affected is the sale by the plaintiffs to the contractors in New York City of lighting fixtures, low tension switchboards, signalling equipment, panel boxes, control equipment, switches (other than toggle), high tension cables, armored BX cable, wire, outlet boxes, branch circuits and feeders (Findings, 345, p. 276, 228-30, pp. 239-40), herein called "electrical equipment." The annual volume of purchases of such articles by said contractors is about $10,000,000 (Finding, 229, pp. 239-40).

The Means employed to destroy plaintiffs' commerce is a boycott made effective through the monopolistic control maintained by Local 3 and the contractors over the purchase and installation of electrical equipment in New York City. This boycott is carried on by Local 3 in combination with the contractors—the purchasers and installers of said products—and local manufacturers, producers of such products (Finding, 346, pp. 276-7). All electrical equipment is required to be manufactured, purchased and handled and finally installed by members of this tripartite alliance. Adherence to these restrictions is secured through the mixed inducements of commercial rewards and punishments or the possibility thereof (Findings, 346, 353, 356, 358, 181, 230, 245, 257, 300, 302, 333-41, 154, 219-20).

Summarizing this situation, the Court of Appeals said (p. 311):

> "All in all, the situation disclosed by the findings is that of an entire industry in a local area, quite dominated and closed to outsiders by a powerful union, whose members receive as a result exceedingly higher wages, shorter working hours, and improved working conditions, and whose copartners—the local manufacturers and contractors—also gain by the greater profits achieved through the stifling of competition." (See also, Finding 95, p. 198).

No one but conspiring contractors are "able to buy" and they dare not buy "on a competitive basis" (Finding, 354, p. 280).

Price control was a major purpose:

> "The combination and conspiracy hereinbefore described was intended to and did give the local union manufacturers power to control the market price of their products as a result of their monopoly and was intended to and did give the union contractors exclusive purchasing rights to all electrical equipment for installation and contracts involving larger sums of money wherewith to add to their profits." (Finding, 353, p. 279).

While it appears that the contractors dare not resist the union, it also is found as a fact that they actively and affirmatively participated in the boycott for their profit (Findings, 333-41, pp. 272-5). "Like the manufacturers, the contractors were not averse to the extra expense of union material and labor, when all competition was thus removed from the field" (C. C. A. opinion, pp. 309-10).

A written agreement, executed in March, 1935, to settle a building trades strike during the construction of Rockefeller Center in New York City, enlisted others than the electrical industry in the boycott. The parties were Local 3, The New York Electrical Contractors Association, As-

sociation of Contracting Plumbers of the City of New York, and Heating, Piping and Air-Conditioning Contractors, N. Y. C. Assn., Inc., and Sprinkler Contractors, and the agreement prescribed that certain electrical control equipment—of a type which did not interest the local manufacturers—should not be bought as completed articles but should be assembled and wired by the union contractor on the job. This agreement prevented interstate commerce in the finished product and transferred the business of building this equipment from the plaintiffs' factories in other states to the contractors on the job site (Findings, 275-291, pp. 254-60). It trebled the cost (Findings, 291-93, p. 260), and impaired efficiency, economy and fire insurance protection (Findings, 291-307, pp. 260-5). In two large jobs, the extra costs of disassembling and unwiring and reassembling and rewiring to meet this requirement were respectively $17,500 and $5,800 (Finding, 293, p. 260).

The findings show in detail the extent to which interstate commerce has been restrained and destroyed and prices increased in respect to lighting fixtures (Findings, 231-57, pp. 240-49), switchboards (Findings, 168-87, pp. 217-25), switches (Findings, 263-66, pp. 250-1), control equipment (Findings, 267-307, pp. 252-65), signalling apparatus (Findings, 308-14, pp. 265-7), wire and cable (Findings, 315-20, pp. 267-8), and other lines of equipment (Findings, 321-8, pp. 268-70). By reason thereof, the cost of wiring and assembling lighting fixtures has increased four to eight times (Finding, 251, p. 246) and the prices of other products are materially higher than competing products (Finding, 351, p. 279).

For illustration, the Westinghouse Electric & Manufacturing Company bid $56,000 for the panel boards and switchboards to be installed in the Ten Eyck Low Cost Housing project but was informed "it could not have the job at any price, because the product did not bear the

union label," and the order went to a local union manufacturer for $110,934 (Finding, 183, p. 223). Unlabelled products "cannot be sold at any practical price" (Finding, 187, p. 225). There is nothing in the findings to suggest that the increased prices obtainable through the monopoly were to bear any relation to labor costs.

The control of the market was masterly. As each branch of the industry was enveloped, the entire course of trade was forthwith transferred from its normal channels to the monopolists. During changing periods an inventory was taken of goods held by the contractors and a deadline fixed so that non-union goods purchased in the pre-boycott era for that particular article might be accepted (Finding, 333, p. 272). Special dispensations were granted when it suited the purposes of the combination (Findings, 343-4, pp. 275-6; see also, Findings, 330-1, p. 271). Unknown ways for placing union labels on non-union goods were practiced (Finding, 313, p. 266). The market could be parcelled out like a piece of cheese and the opportunities for graft and corruption were unlimited.

Several findings deal specifically with the increased prices imposed on the public:

> "Some union manufacturers of outlet boxes and switches located in New York City, and working under agreement with Local No. 3, issued from time to time two different price lists for the same products, one containing prices for their products without the union label—for the solicitation of business in unprotected areas where free and open competition must be met, and another containing a price list on a different colored sheet, covering the same products, made by the same employees in the same factory, with the union label, for the solicitation of business in the protected area in New York City and the Metropolitan area, and in some instances, the prices for the protected area have been more than double the prices charged for the same items in the unprotected area" (Finding, 349, p. 278—see also, Findings, 266, p. 251; 351-2, p. 279).

In one case, a meter pan was priced at $2.40 without the union label and $5.40 with the label, the premium for the label being more than the normal price of the product (Finding, 350, p. 278).

Here again, as already stated, there is nothing to show any relation between labor costs and the increased prices.

The conscious activity of Local 3 in securing higher prices for its employers is shown by its official representation at one time on the Committee which administered a price-fixing code (Findings, 156-67, pp. 213-7). "The participation of Local 3 in the formation and policing of the Code as aforesaid was one of the means by which Local 3 obtained the cooperation and aid of the union electrical contractors in the boycotting * * *" (Finding, 165, pp. 216-17). In the case of lighting fixtures, the union even "caused to be established" the manufacturers who were to be the boycott beneficiaries (Finding, 235, pp. 241-2).

The boycott is contrary to union philosophy and objectives and contrary to the policy of the I. B. E. W., the parent union which charters the Locals, in that it bans all outside goods, including union goods made by members of other local electrical unions chartered by the I. B. E. W. (Finding, 179, p. 222; Finding, 246, p. 245; Finding, 250, p. 246; Finding, 326A, p. 270; Finding, 359, pp. 281-2; Finding, 366, p. 284). When a factory in Northern New Jersey, where Local 3 had limited jurisdiction, had a contract with Local 3, its products were accepted but when with the approval of the I. B. E. W. it contracted with Local 52 I. B. E. W., its products were rejected (Finding, 326A, p. 270). When the local contractors and Local 3 received from the I. B. E. W. a list of manufacturers to be patronized—which meant a blacklist of all others (Finding, 338, p. 274)—they pruned it of the outside manufacturers who were working under union agreements approved by the I. B. E. W., so that, as revised, it contained only the names of those having contracts with Local 3 (Finding,

341, p. 274). The outside manufacturers approved by the I. B. E. W. were thereby blacklisted. The combination therefore goes beyond those objectives generally approved by organized labor and gives locality protection to these three groups contrary to the purposes of the parent union and contrary to the normal program of the union movement.

The union is not in dispute with any employer because he refuses to conform to union demands. It acts in perfect collusion with the local contractors and local manufacturers and has no quarrel with the plaintiffs. The ban on plaintiffs' products is an absolute ban and there is nothing plaintiffs can do to avoid it (Findings, 360-1, p. 282). It is like a strike against the employment of a man because he does not belong to a union and at the same time arbitrarily denying him union membership. It is the difference between regulation and prohibition. The plaintiffs are unobjectionable in the union world. They might be the most approved of all employers by the I. B. E. W. and they might maintain standards which Local 3 was aspiring to reach in New York City, but all this would not save them. The defendants are not seeking to bring about any change in employment conditions in plaintiffs' factories (Findings, 360-1, pp. 282-3; Findings, 368-9, p. 285). The subject matter of the suit does not involve or grow out of a labor dispute (Findings, 363, 367-9, pp. 283-5).

This combination, which is continuing, has caused, and threatens further to cause, the plaintiffs irreparable damage and injury (Findings, 347-8, p. 278).

Assignment of Error

The error urged is the failure of the Court of Appeals to hold that the combination established by the findings violates the Sherman Anti-Trust Law, 15 U. S. C. A., sec. 1, et seq. and laws amendatory thereof, and should be enjoined.

I

The findings of fact present a combination in violation of the Federal Anti-Trust laws.

Local 3 and the employers in the electrical industry, together with contractors for plumbing, air-conditioning and sprinkling equipment, have pooled their economic power to bar interstate competition in electrical equipment and thus monopolize the New York City market. This is accomplished by requiring all purchasing and installation of electrical equipment to be done exclusively by the conspiring contractors and all production to be done by the conspiring manufacturers—or if they do not produce the particular equipment in question—by having it built by the conspiring contractors on the job; and by requiring that all manual work performed in the production and installation of electrical equipment shall be done by members of Local 3. The sole objection to the non-area products which are thus embargoed is that they would infringe on the monopoly and the income of the conspirators.

The Court of Appeals finds this combination to be legal because one group of the tripartite alliance is actuated by a motive or intent to "make work" for journeymen members. The conclusion appears to be that manufacturers, contractors, dealers and employees within a local industry may lawfully unite their economic power to secure a local monopoly if the conspirators include a labor group seeking to increase their employment opportunities. Thus the cotton mills and the textile workers of the North may unite to eliminate the competition of Southern cotton mills, and the shipbuilding yards and airplane factories on the Pacific Coast, through restraints of trade otherwise unlawful, may unite artificially to protect the continuance of that industry on the Pacific Coast and—as in this case—city markets may be preempted as private pre-

serves with the union acting as policemen to punish poachers.

1. We submit there are fundamental social, political and legal reasons which should lead this Court to rule that Congress never intended to remove such combinations from the prohibitions of the anti-trust laws.

One of the major purposes of our national existence, for which the Constitution was adopted, is the maintenance of a national economy free from trade barriers, and no attempt to destroy unqualifiedly that national area of free trade should escape condemnation.

The avowed purpose of this monopoly being sectional and territorial in character—and having no relation to labor standards or class alignment—is an undisguised attempt, within its scope, to relegate the New York City market to a condition of economic isolation.

While mankind strives to raze trade barriers as between nations, and thus to enlarge the area of free trade in the cause of human betterment, these monopolists erect barriers within the very confines of the nation and thus seek the disintegration of our national economy.

If a group of citizens in New York City may bar the entry of union-made equipment coming from Philadelphia, St. Louis, Detroit or Chicago, these offended cities will retaliate in self-defense and the nation will be Balkanized and thrust back into a state of economic chaos such as prevailed when colonies erected protection barriers against inter-colonial trade.

Where the discrimination or restraint is based on the extraterritorial origin of the goods and not upon terms or conditions of employment, it is against any conceivable public interest to contend that a Constitutional purpose, essential to our existence as a nation, must be discarded for the benefit of a group of producers, contrac-

tors, dealers and workers in a single city. If competition, as a regulator of trade in the public interest, is to be so easily destroyed, the need for public regulation and the end of our free economy will be inevitable.

As a result of the Court of Appeals decision in this case, real estate agents are already soliciting outside industries to locate within the New York City area, on the ground that only by so doing may they enjoy the protected metropolitan market. Such a perverted trend, artificially imposed, promotes undesirable congestion in large cities and taxes the public by increasing living costs.

2. Since neither city, state nor Federal government has the power by legislation to authorize the creation of such trade barriers or the allocation of territorial markets, no court should read into the Federal Anti-Trust Act a sanction for private persons so to do. While Congress can prohibit the transportation of articles in interstate commerce in the reasonable exercise of police power, it seems clear that it may not do so for the sole purpose of giving a group of citizens in a particular state protection from the competition of citizens in another state. Cf. *Carolene Products Company* v. *U. S.*, 322 U. S. 119.

Every free person in the United States has a basic right to move from state to state (*Edwards* v. *California*, 314 U. S. 160) and to ship merchandise from state to state, and the public is entitled to enjoy the benefits which flow from the exercise of this right. To withdraw this right for the sole purpose of giving persons in some locality the equivalent of a tariff or embargo protection would conflict with the inherent purpose for which the right was created.

3. The grant of power to Congress to regulate interstate commerce in the interest of national unity, and the many Federal statutes enacted to secure freedom of interstate commerce and the "liberty of the trader to engage

therein,"* could hardly be invoked to correct a scheme more clearly repugnant to them and more clearly in conflict with the national policy they are designed to safeguard.

Senator Sherman, in sponsoring the passage of the Sherman Anti-Trust Act, referred to the lack of economic unity prevailing in this country before the Constitution delegated to Congress the power to regulate interstate and foreign commerce. The Senator said:

> "The want of this power was one of the leading defects of the Confederation, and probably as much as any one cause conduced to the establishment of a Constitution. It is a power vital to the prosperity of the Union, and without it the Government could scarcely deserve the name of a National Government and would soon sink into discredit and imbecility. It would stand as a mere shadow of sovereignty to mock our hopes and involve us in a common ruin." (21 Cong. Rec., 2461.)

In adopting the Federal Constitution, no factor was more preeminent in the minds of the statesmen in 1787 than the necessity for establishing the free flow of interstate commerce, and protecting it against state barriers.

See

Argument of Daniel Webster in *Gibbons* v. *Ogden*, 9 Wheat. (22 U. S. 1 at pages 11 to 13) and concurring *Opinion of Justice Johnson*, at pages 223 to 226;
Baldwin v. *Seelig*, 294 U. S. 511.

4. Nor is there anything in the trend of modern legislation or public policy to exempt the combination involved in the case at bar. It does not involve the employer-employee relationship. It is an economic war between production units of employers and employees in one area, and like production units in other states. It is a dispute over the terms and conditions of selling and buying elec-

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* *Loewe* v. *Lawlor*, 208 U. S. 274.

trical equipment and not a dispute over terms and conditions of employment. It is a device to market articles already produced, by boycotting competing articles without regard to the labor standards under which they have been produced. It is unrelated to class conflict.

The social or political philosophy underlying special legislation for the benefit of labor has no application to competitive relationships between groups of competing producers. The National Labor Relations Act protects employees as against employers. The Fair Labor Standards Act fixes minimum standards for employees below the supervisory level. The Clayton Act and the Norris-LaGuardia Act enlarge the area of freedom of collective action by employees where there is a labor dispute over terms and conditions of employment. Other illustrations can be given. None of them sanctions or encourages sectionalism. They deal with rivalries or conflicts between classes and not rivalries between localities. They concern horizontal and not vertical cleavages or segments of society. Congress has been interested in helping labor in its efforts to secure protection against injustices but by the terms of the anti-trust acts it has opposed protected markets as between states or as between competing production units where labor standards are not in issue. The concept of domestic free trade still dominates our anti-trust policy and is not qualified by our labor policy of aiding collective bargaining.

5. The essence of this conspiracy is not merely restraint of trade but monopoly by a closed ring. New contractors cannot enter the ring. Journeymen, barred under closed shop restrictions, cannot enter the trade, unless they are sons or brothers of those who have already been admitted, and no products can enter from the outside on any terms or conditions. It is the difference between regulation and prohibition, as recognized in the exercise of police power, and organized labor in "legislating" police regulations for

an industry (*J. I. Case Co. v. N, L. R. B.*, 321 U. S. 332) should recognize that distinction. It is one thing to outlaw the scab but it is quite a different thing to deny him redemption. The double barrier becomes an attack on fundamental rights and ceases to be an instrument of social or industrial reform, which gives rise to a labor dispute. Closed shop unionism is impressed with a public interest and must take on new restraints (*Cf. Steele* v. *L. & N. R. R. Co.*, 323 U. S.; *James* v. *Marinship*, California Supreme Court, Dec. 1944). The combination, having monopolized the services of purchasing and installing said equipment within the community, is impressed with a duty not to bar outside goods. (Cf. *U. S.* v. *Terminal R. R. Association*, 227 U. S. 683.) Possibly such a combination might raise the level of employment conditions by discrimination against the nonconformist, but it may not arbitrarily discriminate against the colored race or against those who live and produce in a sister state.

It is conceded that the combination, whether examined from the viewpoint of the conspiring union, the conspiring manufacturers or the conspiring contractors, was to increase the income of all three groups of allies by preventing contractors or manufacturers outside of the local ring from sharing the market. There is solidarity of interest in every detail. The gain of the non-labor member is the gain of the labor member. As stated in *Lumber Products Association, Inc.* v. *United States*, 9 Cir., 144 F. (2d) 546, "They split the take," one in wages and the other in profits. Through this control of the distribution of orders or contracts for their employers, the union members avoid sharing work opportunities with non-area journeymen, just as the employers avoid sharing market opportunities with non-area employers. This is not a combination to protect labor from low-wage goods, machine-made goods, non-union goods, or the goods of a rival union. It is a combination to exclude all non-area goods without regard to the level of wages, the terms of employment,

low labor costs due to improved machinery or technological progress, or any legitimate concern of labor. The union does not resist unfair competition but resists all non-area competition.

The benefits sought grow out of an attempt to alter the relation between producer and consumer and not out of an attempt to alter any relation between employer and employee. No benefit flows to any of the three groups of the conspirators except through monopolizing the market for the sale of manufactured articles. The restraint of commerce is not an incident of any legitimate purpose. In defending themselves the defendants merely assert that by reason of this restraint of trade and monopoly they can increase their income.

6. The union movement itself never sought to exempt such combinations when it was seeking Congressional relief and advocating the legislation which the Court is now called upon to interpret. The reports of Congressional committees and the literature of the day prove this. The combination is unorthodox according to union philosophy when it fails even to recognize the legitimacy of products made by any local union chartered by the same parent union. Local 3 and the I. B. E. W. were at loggerheads over this very point (Finding, 341, p. 274).

7. In this case a labor union—which is the exempted group under our anti-trust laws—unites with employers who are the non-exempted group. Does the exemption extended to labor whitewash the non-labor group or does the taint imposed on a non-labor group extend to the labor group? Surely all those engaged in such a common enterprise must have the same legal standing regardless of their station in life (Cf. *American Medical Association* v. *U. S.*, 317 U. S. 519), for otherwise equality before the law is lost and the fundamental principles of conspiracy law, visiting equal blame on all, are overthrown. A conspirator's liability for what is done or said by other con-

spirators is not qualified by the degree or nature of his participation or the character or extent of the benefits he hopes to derive. Such whitewashing of employer-employee combinations as is here sought would undermine our anti-trust and anti-monopoly laws by making it possible for collusive groups of employers and unions to pool their economic power for the purpose of restraining competition and milking the public.

8. Congress has frequently exercised its control over interstate commerce for the purpose of aiding enforcement of both Federal and state laws. It is not to be presumed, therefore, that Congress has so exercised its control as to deprive people of their rights under another Federal act. To say that products made under union relationships required by the National Labor Relations Act shall not flow in interstate commerce,—because not made under different union relationships impossible of attainment,—deprives the journeymen who produce the banned products of their rights under the National Labor Relations Act (see *U. E. R. M. W. A.* v. *I. B. E. W.*, 2 Cir., 115 F. [2d] 488), as well as their Federal rights to produce for interstate commerce.

9. Except for the so-called "labor exemptions" there can be no doubt that the combination violates the anti-trust laws.* We therefore attack this problem of defining such exemptions by dealing chronologically with the crucial decisions of this Court.

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* *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Association*, 274 U. S. 37;
U. S. v. *Painters Dist. Counsel #14*, 44 Fed. (2d) 58, unanimously affirmed, 284 U. S. 582;
U. S. v. *Brims*, 272 U. S. 549 (unanimous decision);
Local 167 v. *U. S.*, 291 U. S. 293 (unanimous decision);
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443;
Loewe v. *Lawlor*, 208 U. S. 274 (unanimous decision);
Lawlor v. *Loewe*, 235 U. S. 522 (unanimous decision).

In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, this Court, relying in part on *U. S.* v. *Brims*, 272 U. S. 549; *Local 167* v. *U. S.*, 291 U. S. 293, and *Second Coronado* case, 268 U. S. 295, held that the anti-trust laws apply to labor where the activities are "shown to have any actual or intended effect on price or price competition", or where there is "the plain design of suppressing or narrowing the interstate market" or "suppression of competition in the market by methods which were deemed analogous to those found in the non-labor cases." As the offense involved is purely an economic one and it is the forbidden result rather than the means of accomplishment which is of chief concern, it is immaterial, according to the *Apex* decision, whether the means employed are moral or unmoral, legal or illegal.

In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, the same principle was further developed in a discussion as to whether the case involved a labor dispute or an interference with commerce. Plaintiffs lost on the finding of fact that the so-called "Vendors" attacked by the boycott were not entrepreneurs but an organizable labor group competing with members of the defendant union and that therefore the entire controversy constituted a "labor dispute." The emphasis placed in the opinion on this factual distinction confirms the doctrine already developed by this Court, which confined the labor exemptions to matters relating to the employer-employee relationship.

In *U. S.* v. *Hutcheson*, 312 U. S. 219, a divided Court dealt with the Sherman Act, the Clayton Act and the Norris-LaGuardia Act as "three interlacing statutes" and reinterpreted the Clayton Act of 1914, in the light of the Norris-LaGuardia Act of 1932. It held that the labor exemptions under the anti-trust laws were identical for the purposes of injunctions, damages or criminal prosecutions (p. 234) and therefore made pertinent to this injunction case all decisions dealing with the substantive law on this

subject, regardless of whether they are or are not injunction cases. In dealing with the substantive law the Court said (p. 232):

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

The Court held the boycott involved in that case constituted "lawful conduct under the Clayton Act unless the defendants cannot invoke that Act because outsiders to the immediate dispute also shared in the conduct." The meaning of the words "non-labor groups" is further illuminated by the Court's reference to *United States* v. *Brims* (*supra*), which has been reaffirmed by the United States Supreme Court in the *Apex* and *Hutcheson* cases.

These decisions give the background for the decision in *Columbia River Packers Assn.* v. *Hinton*, 315 U. S. 143, an injunction suit, relied upon by the District Judge in the instant case, where the Court in construing the Norris-LaGuardia Act, said, page 145:

> "• • • the attention of Congress was focussed upon disputes affecting the employer-employee relationship. and that the Act was not intended to have application to disputes over the sale of commodities."

And at page 146:

> "But the statutory classification, however broad, of parties and circumstances to which a "labor dispute' may relate does not expand the application of the Act to include controversies upon which the employer-employee relationship has no bearing. Our decision in *New Negro Alliance* v. *Grocery Co.*, 303 U. S. 552, and *Milk Wagon Drivers' Union* v. *Lake Valley Co.*, 311 U. S. 91, give no support to the re-

spondents' contrary contention, for in both cases the employer-employee relationship was the matrix of the controversy.

"* * * That some of the fishermen have a small number of employees of their own, who are also members of the Union, does not alter the situation. For, the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours, or other terms and conditions of employment, of these employees."

The case of *American Medical Association* v. *U. S., supra,* involved an indictment of medical associations and practicing physicians under the anti-trust laws. The Court first sustained the lower court in saying: "The fact that defendants are physicians and medical organizations is of no significance, for Sec. 3 prohibits 'any person' from imposing the proscribed restraint." The Court then proceeded, pages 533-4:

"Section 20 of the Clayton Act, as expanded by Section 13 of the Norris-LaGuardia Act, is the only legislation which can have any bearing on the case."

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"(p. 536) * * * These independent physicians, and the two petitioning associations which represent them, were interested solely in preventing the operation of a business conducted in corporate form by Group Health. In this aspect the case is very like *Columbia River Packers Assn.* v. *Hinton,* 315 U. S. 143. What was there decided requires a holding that the petitioners' activities were not exempted by the Clayton and the Norris-LaGuardia Acts from the operation of the Sherman Act."

This language applies here specifically. These defendants "were interested solely in preventing the operation of a business conducted in corporate form * * *." They were not interested in the labor conditions of that business.

10. As already stated, the original Anti-Trust Act and the supplementary acts of 1914 and 1932 are "interlacing" acts to be reconciled by defining the limits of the labor exemptions. Since the offense charged goes beyond the purpose of the labor exemptions, the prohibitions of the original act are still applicable.

U. S. v. *Borden Co.*, 308 U. S. 188;
Terminal Warehouse Co. v. *Penn. R. R. Co.*, 297 U. S. 500.

The suppression of competition without regard to labor standards and with intended price increases,—whether or not in cooperation with non-labor groups,—is not within the labor exemptions of the anti-trust laws. It is a non-labor issue. The joinder with non-labor groups is merely one of the persuasive pieces of evidence that labor has gone beyond its exemptions. Whether there is any such joinder seems immaterial if the dispute does not concern the "employer-employee relationship" and is in fact a dispute "over the sale of commodities" (*Columbia River Packers* case, *supra*), without regard to the labor standards under which they are produced. In fact, it would seem to be immaterial, except on the question of probative weight, whether the combination was employer-inspired or employee-inspired. The test is whether labor has stepped "off the reservation" and entered the field of merchandising control, without regard to working conditions.

11. Among the numerous cases* dealing with related situations, some definitely support, but none contravenes, our

* *United Electrical Coal Cos.* v. *Rice*, 80 F. 2d. 1 (7 Cir.) cert. denied 297 U. S. 714; *Hill* v. *U. S.*, 84 F. 2d. 17 (3 Cir.) reversed on other grounds 300 U. S. 105; *Scavengers Service Corp.* v. *Courtney*, 85 F. 2d. 825 (7 Cir.); *Russell* v. *U. S.*, 86 F. 2d. 389 (8 Cir.); *Blankenship* v. *Kurfman*, 96 F. 2d. 450 (7 Cir.); *Union Premier*

(*Footnote continued on next page*)

contentions. We discuss only the two upon which the Circuit Court relied.

In the case of *U. S.* v. *American Federation of Musicians*, 47 Fed. Supp. 304, aff'd 318 U. S. 741, there was a strike against a producer of records and supplementary action, all for the purpose of preventing the manufacture of musical records and electrical transcriptions, which by their use supplanted the services of live musicians. All activities

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Food Stores v. *Retail Food Clerks, etc.*, 98 F. 2d. 821; 101 F. 2d. 475 (3 Cir.) Remanded to D. C. to dismiss complaint as moot, 308 U. S. 526; *Fur Workers Union Local 72* v. *Fur Workers Union*, 105 F. 2d. 1 (U. S. C. A., Dist. of Col.) affd. 308 U. S. 522; *Converse* v. *Highway Const. Co.*, 107 F. 2d. 127 (6 Cir.); *U. S.* v. *Gold*, 115 F. 2d. 236 (2 Cir.); *Int. Assn. of Bridge, Structural etc. Workers* v. *Pauly Jail Bldg. Co.*, 118 F. 2d. 615 (8 Cir.) cert denied, 314 U. S. 639; *Gundersheimer's* v. *Bakery & Confectionery Workers*, 119 F. 2d. 205 (U. S. C. A. Dist. of Col.); *Albrecht* v. *Kinsella*, 119 F. 2d. 1003 (7 Cir.); *Lee Way Motor Freight Inc.* v. *Keystone etc.*, 126 F. 2d. 931 (10 Cir.) cert. denied 317 U. S. 645; *Truck Drivers' Local* v. *U. S.*, 128 F. 2d. 227 (8 Cir.); *Hinton* v. *Columbia River Packers Assn.*, 131 F. 2d. 88 (9 Cir.); *Carter* v. *Herrin Motor Freight etc.*, 131 F. 2d. 557 (5 Cir.); *Western Union Tel. Co.* v. *I. B. E. W.*, 133 F. 2d. 955 (7 Cir.); *Brown* v. *Coumanis*, 135 F. 2d. 163 (5 Cir.); *U. S.* v. *Local Union #3*, 42 F. Supp. 783 (S. D. N. Y.); *U. S.* v. *N. Y. Electrical Contractors Assn.*, 42 F. Supp. 789 (S. D. N. Y.); *Diamond etc.* v. *Leader*, 20 F. Supp. 467; appeal dismissed 99 Fed. 2d. 1001; *Fehr Baking Co.* v. *Bakers' Union*, 20 F. Supp. 691; *Donnelly Garment Co.* v. *I. L. G. W. U.*, 20 F. Supp. 767; 21 F. Supp. 807; 304 U. S. 243; 23 F. Supp. 998, 99 Fed. 2d. 309 (8 Cir.) cert. den. 305 U. S. 662; 119 Fed. 2d. 892 (8 Cir.), 55 F. Supp. 572; *Oberman & Co.* v. *U. G. W.*, 21 F. Supp. 20; *Houston & North Texas etc.* v. *Local Union #886*, 24 F. Supp. 619; *U. S.* v. *Drivers, Chauffeurs and Helpers Union*, 32 F. Supp. 594; *In Re Local Union No. 550*, 33 F. Supp. 544; *Consolidated Terminal* v. *Drivers Union*, 33 F. Supp. 645; *U. S.* v. *Heating, Piping & Air Conditioning Contractors*, 33 F. Supp. 978; *U. S.* v. *Lumber Institute etc.*, 35 F. Supp. 191; *Keystone Freight Lines etc.* v. *Pratt etc.*, 37 F. Supp 635; *U. S.* v. *Associated Plumbing etc.*, 38 F. Supp. 769; *U. S.* v. *Goedde*, 40 F. Supp. 523; *U. S.* v. *Central Supply Ass'n.*, 40 F. Supp. 964; *Manaka* v. *Monterey etc.*, 41 F. Supp. 531; *Hunt* v. *Crumboch*, 44 F. Supp. 796, 143 F. 2d. 902; *Loew's* v. *Basson*, 46 F. Supp. 66 (S. D. N. Y.); *Hunt* v. *Brotherhood etc.*, 47 F. Supp. 571; *U. S.* v. *Bay Area etc.*, 49 F. Supp. 733; *Lumber Products Assn., Inc.* v. *U. S.*, 144 Fed. (2d) 546; *U. S.* v. *San Francisco Electrical Contractors Assn.*, 57 F. Supp. 57.

centered on this issue and the purpose was to create work opportunities for members of the defendant union. The lower Court, in dismissing the complaint, said (47 Fed. Supp. 309):

> "Here the employees seek only a contract with their employers for a 'closed shop' (in a sense large enough to include a shop which excludes not only non-union workers but also machines) and they seek this contract primarily for their (the servants') benefit and not for the benefit of a non-labor group."

The means employed was merely a refusal by defendants to produce articles which would reduce employment of musicians by eliminating part of their jobs. There was no question of restraining the competition of rival lines of merchandise.

A like situation confronted the Court in *U. S.* v. *Carrozzo*, 37 Fed. Supp. 191, aff'd *sub nomine; U. S.* v. *International Hod Carriers, etc.*, 313 U. S. 539, where defendant hod carriers struck against building construction to prevent the use of concrete mixers, which displaced their labor. In that case the Court below said (at p. 196), "In the instant case no acts are alleged to have been performed which would constitute restraint of trade in commercial competition in the marketing of truck mixers." It was merely a "jurisdictional dispute."

In both of these cases the defendants in effect said: "Give us all of this kind of work or we will take none of it"; a form of combination which was legal long before the passage of the Clayton Act or the Norris-LaGuardia Act. *National Fireproofing Co.* v. *Builders Association*, 169 Fed. 259 (2nd Cir.). In both the musicians and hod carriers cases exclusive employment was sought in local enterprises and there was no direct purposeful restraint of interstate commerce—merely a dispute over local conditions. Neither of the cases involved completed products brought to the place of use through interstate commerce and there dis-

criminated against in order to maintain a monopoly market for products locally manufactured. In neither case was a privileged group of employers given exclusive market opportunities as against all others and competition destroyed to maintain the monopoly.

Cf.:

Levering & Garrigues Co. v. Morrin, 289 U. S. 103;
United Leather Workers v. *Herkert & Meisel*, 265 U. S. 457;
U. M. W. v. *Coronado Coal Co.*, 259 U. S. 344.

12. If, in the case at bar, it appeared that Local 3 was merely at loggerheads with the contractors over the use of some modern equipment or efficiency plan which reduced working hours, or over the number of electricians to be employed per unit of installation, the situation would be like that presented in the musicians and hod carriers cases. But the facts in the case at bar are otherwise. The contractors, far from having a labor dispute over the matters involved in this case, are working in harmony with the union in respect thereto and, on a basis of mutual advantage, are seeking a larger income for all by monopolizing all dealings and diverting patronage to local sources. The restraint grows out of cooperation between employer and employee and not out of dispute. Unless the contractors cooperate, whether willingly or unwillingly, the boycott cannot proceed. The union power merely serves to hold them to their commitment.

13. The agreement between labor, distributors, installers and producers that certain lines of merchandise will not be carried or offered to the public deprives the public of its sovereign right of choice or its right of commercial suffrage. It operates as an undemocratic boycott, clearly distinguishable from labor's appeal to the consumer that patronage be diverted to support labor objectives. The

public is entitled to the opportunity to buy articles which manufacturers, merchants and journeymen seek to have placed before them, and combinations of labor and non-labor groups to prevent this are against the public interests within the meaning of our anti-trust laws.

14. In attempting to apply the words "labor dispute," as used in the Norris-LaGuardia Act, it must be remembered that the public policy declared in the statute relates to collective bargaining and that under Sec. 107 the requisites for an injunction call for a showing of comparative injury as between the parties to the action, as well as an effort on the part of the plaintiff to negotiate, mediate and arbitrate the issues. *Brotherhood of R. R. Trainmen* v. *Toledo, etc. R. R.*, 321 U. S. 50. In the light of these provisions it becomes clear that the words "labor dispute" can have no application to a situation, such as arises in the instant case, where there is nothing that the parties can negotiate, mediate or arbitrate and where the doctrine of comparative injury can have no rational application.

II

Further Comments on the Opinion of the Court of Appeals.

The Court of Appeals commented upon the fact that none of the conspiring employers was made a party defendant, but this is immaterial, since defendants are bound by the acts and declarations of conspirators who are not parties to the suit (*Clune* v. *U. S.*, 159 U. S. 590; *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229), and a party is free to sue only part of the conspirators and, in fact, may choose those who had no direct contact with the immediate transaction which injured the plaintiffs (*Atlanta* v. *Chattanooga*, 127 Fed. 23 (C. C. A.); 203 U. S. 390). In fact, it is common practice for the Department of Justice to name conspirators in an anti-trust indictment who are not named as defendants.

In a case of this character it was reasonable and practicable to select the union conspirators, as they represented the keystone to the arch or, to change the simile, the cement which compelled adherence to artificial and costly restrictions by hundreds of contractors and many manufacturers. The theory of the action was to remove this police force and re-establish individual freedom of action on the part of buyers.

The Court of Appeals criticized the breadth of the injunction but it is obvious that such discussion does not suport a dismissal of the action. Moreover, on this point it must not be forgotten that the reason for the illegality of the combination is fundamental. It lies in the objective of isolating a particular locality in order to monopolize the market in that locality. All steps, however innocent or constitutionally protected, taken to further that end, are steps in the plot (*Aikens* v. *Wisconsin*, 195 U. S. 194) and enjoinable (*Gompers* v. *Bucks Stove & Range Company*, 221 U. S. 418; *U. S.* v. *Reading*, 226 U. S. 324). That is all this injunction undertakes. According to settled rules of construction it cannot be applied to combinations different in character from that which constituted the subject matter of the action. Of course, these defendants are still free, so far as the injunction is concerned, to induce people to refuse to buy or handle products in furtherance of some different purpose, but once the illegality of the combination is determined, the relief should be complete and effective, to the same degree as injunctions against business organizations. To use the terminology of the Labor Relations Boards, there should be disestablishment of the illegal combination so far as it affects plaintiffs. After the law on this subject is determined it might be practicable to insert in the decree and the injunction some added description as to the nature of the combination but it would not affect the scope.

The defendants' contention that they should be enjoined only from prosecuting this combination in conjunction with

non-labor groups (pp. 172-3) misses the point. It is the pursuit of the non-labor objective which must be halted regardless of whether the non-labor groups continue to cooperate.

The Court of Appeals points out, in respect to the importance of the non-labor group, that there was necessarily "a real change in emphasis as the case progressed", "because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation." In this connection it refers to the original complaint in 1935 and the "expanded, amended complaint in 1937." This comment does not strike us as important, but it is certainly misleading when it is recalled that the *Apex* case was decided in 1940 and the *Hutcheson* case in 1941, three and four years respectively after the filing of the amended complaint.

The Court answers the plaintiffs' claim in respect to the alliance with non-labor groups, first by assuming that the unions could accomplish the same anti-social result without such an alliance—an assumption not warranted in the field of human relations and economic organization,—and second, by concluding that crucial sentences in the *Hutcheson* case "should not be read with exacting literalness." We respectfully submit that a reading of the pertinent decisions of the Supreme Court supports the conclusion that labor alliances with non-labor groups for non-labor objectives are not exempted as labor combinations from the anti-trust laws and that on this point the brief but clear and definite decision of the District Court in this case is in marked contrast with the elaborate discourse of the Court of Appeals.

When labor enters into collusive arrangements with employers to use its joint powers to milk the public, a menace is created which is more dangerous to public interests than when labor acts alone and the economic relationships at issue are then between producer and consumer and not between employer and employee.

It is admitted, as the Court of Appeals asserts, that the union was acting in its own self-interest, as well as in the interest of the non-labor groups. Self-interest is the dynamic force behind practically all monopolies and restraints of trade. It is undeniable, however, that a combination with an unlawful purpose is not saved by the fact that it also has a lawful purpose. A strike which includes two objectives,—one lawful and one unlawful,—is an unlawful strike. (*Folsom Engraving Company* v. *McNeil*, 235 Mass. 269.) Nor is it true, as the Court of Appeals suggests, that an unlawful combination should be left untouched because the same result could be accomplished in a lawful way. It is not unusual to find a situation where a lawful object may be accomplished by either a lawful or unlawful means but that fact does not justify resort to the unlawful means.

The Court of Appeals, while commenting on these speculative factors, which heretofore have never been weighted in cases of this character, entirely ignores the argument that this case presents a naked attempt to promote economic sectionalism contrary to the fundamental purpose for which Congress was given control over national commerce.

Conclusion

The plaintiffs urge that the defendants' combination as set forth in the findings is in violation of the anti-trust laws and should be enjoined and that the decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ALLEN BRADLEY COMPANY, ALLIS-CHALMERS MANUFACTURING COMPANY, CLARK CONTROLLER COMPANY, COLT'S PATENT FIRE ARMS MANUFACTURING COMPANY, CUTLER-HAMMER, INC., THE ELECTRIC CONTROLLER & MANUFACTURING COMPANY, GENERAL ELECTRIC COMPANY, MONITOR CONTROLLER COMPANY, SQUARE D COMPANY, TRUMBULL ELECTRIC MANUFACTURING COMPANY and WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY,

Petitioners,

against

LOCAL UNION No. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BERT KIRKMAN, individually and as President thereof, WILLIAM BECK, individually and as Treasurer thereof, HUGH MORGAN, individually and as Assistant Business Manager thereof, GEORGE W. WHITFORD, individually and as Recording Secretary thereof, JACOB S. SOLOMON, individually and as Business Agent thereof, and GERALD DUFFY, individually and as an Agent thereof,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement of the Case

The Circuit Court of Appeals, in respondents' view of the case, rested its determination largely on questions of fact. The Supreme Court had in its most recent decisions, to which some reference is made below, given a clear construction of the intent of the Sherman, Clayton and Norris LaGuardia Acts, so far as they affected a workman's right

to refuse to work either singly or jointly in association with his fellow workers. The Circuit Court of Appeals, accordingly, applied the law, and made no new interpretations thereof or departures from the recent decisions of this Court.

"These cases," the Circuit Court of Appeals wrote (Opinion, p. 319), "as well as earlier ones are too closely similar to the case at bar, indeed, going beyond it in some aspects, to permit the broad adjudication of illegality here and the injunction based on it to stand."

The findings of fact were 374 in number. In view of the fact that the declaration of the District Court was one of illegality, adverse to the respondents, it is not surprising that an occasional finding of fact lifted out of its context and read without reference to what has gone before seems to possess a substantiality which is largely dissipated the moment such finding is restored to its context and evaluated in light of all the findings.

What petitioners sought, but failed to establish as matter of fact, was a partnership between the Union and the Employer of the Union's members to engage in *commercial* monopolistic practices on an ordinary business basis of sharing profits flowing from prices artificially enhanced from the closing of a market to the competition of outsiders. The Special Master, the District Judge and the Circuit Court of Appeals all agreed—and the Union does not dispute—that the *effect* of its labor agreements with the Employers of its members, procured through Union activity and pressure, was in a measure to increase prices and make it difficult for manufacturers not employing members of the Union to market their products within the New York Metropolitan Area in which the Union has jurisdiction. Such effect is often found to result from successful Union activity. But the effect is not to be stigmatized as illegal unless the *cause* is illegal.

An identical effect can be achieved in different ways—some lawful, some forbidden. An agreement among manu-

facturers to freeze out competition and thereby to increase their profits is definitely in violation of law. An agreement between a labor Union and its Employers for a closed shop and for the affixing of Union labels on products—an agreement which provides that the Union members will install only those products manufactured by other members of their Union—may produce the same effect on prices as the monopolistic agreement among the manufacturers, but in balancing the evils of higher prices against lower wages Congress has concluded that public policy requires a concession to labor of the legality of its agreements in this regard.

The Circuit Court of Appeals in appraising the factual situation considered not random findings, but "the general import of all findings" in addition to several explicit findings, holding that, "on any judicious view of the case, we do not believe the motive or intent of defendants can be at all in doubt; * * *" (Opinion, p. 315).

The charge that the Union and its Employers had conspired to do things forbidden by law was rejected by the Circuit Court of Appeals, which summarized the activities of the Union in a single sentence (Opinion, p. 315): "In other words it was a make work campaign for the benefit of union members."

The facts need be touched on only briefly.

When the depression was at its depth and three-quarters of the Union's membership were out of work, the petitioner manufacturers were aggravating Union unemployment in two ways.

In the first place, only three of the petitioners had plants within the Metropolitan Area and vicinity. All three resisted the organizational efforts of the Union, and in fact, one of them removed from the territory (findings of fact 18, 23, 24, pp. 179, 180; findings of fact 55-59, pp. 187-188; findings of fact 81, 82, p. 193). The Circuit Court of Appeals itself noted (Opinion, p. 308) that of the eleven plaintiffs in the action only "*several* operate under collective bargaining agreements with local unions in their localities."

In the second place, the petitioners reduced the available opportunities for the work of installing electrical apparatus within such Metropolitan Area by extensive increased prefabrication of the equipment. To combat this encroachment upon its work opportunities, the Union undertook to unionize those factories which it could reach, namely, those within the Metropolitan Area. Such unionization provided additional job opportunities for the Union's members and enabled it, moreover, to regulate the extent to which factories could encroach upon the job opportunities of those other members who were engaged in the actual installation of the equipment. The Union instructed the latter class of its members not to install any equipment which the factory-hand members had not worked upon (Opinion, pp. 308-311; findings of fact, 231-243, pp. 240-244; finding 246, p. 245; findings 252-256, pp. 246-248; findings 258, 259, p. 249; findings 267-283, pp. 252-257; findings 285-291, pp. 257-260; findings 294, 295, 297, 299, pp. 261-262; findings 308-312, pp. 265-266; findings 315-320, pp. 267-268; finding 321, p. 268; findings 324-326, pp. 269-270; finding 329, pp. 270, 271; findings 339, 340, p. 274; finding 342, p. 275).

The Union has a large membership in the Metropolitan Area. That membership is well disciplined. The campaign of unionization was successful, and contractors and manufacturers, both singly and in groups, yielded to the pressure of the Union and entered into closed shop and labeling agreements with it. The Union benefited. Job opportunities increased. Wages were increased. Hours were shortened (Opinion, pp. 308-311, finding of fact 89, p. 196; findings 93, 94, 95, pp. 197, 198; findings 118-124, pp. 203-205; findings 127-131, pp. 206-207; findings 168-177, pp. 217-221; finding 186, pp. 224, 225; finding 217, pp. 235-236; finding 235, pp. 241-242; findings 238, 239, pp. 242-243; finding 256, p. 248).

The petitioners felt the shoe pinch. For if the Union membership refused to install their equipment as not having been made by their fellow members, the public, consist-

ing of architects, builders, engineers and municipalities, as well as the contractors who employed the members engaged in the installation, would not buy from the petitioners.

Note, please, that of this group only the contractors had agreements with the Union. The others, comprising the "general public", although not alleged to be "confederates" of the Local Union, similarly, refused to buy from the petitioners. This gives point to the Circuit Court of Appeals, analysis of the situation, as follows (Opinion, p. 321):

> "It seems clear, therefore, that the union members may refuse to work upon the plaintiffs' products; and, in view of the position of economic power which the union has now attained, that privilege is for practical purposes an almost complete shield for the defendants' acts which are most injurious to the plaintiffs. For all the other acts charged against the defendants may be barred; and yet if the union can hold its ranks together and keep its members from working upon plaintiffs' products, the Metropolitan Area will still be closed to them."

Shifting Factual Picture as Presented by Petitioners

In its appraisal of the facts the Circuit Court of Appeals took note of petitioners' significant shift in factual emphasis to enable it to make a case "because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation" (Opinion, p. 313). In the original complaint there had been no claim of conspiracy between the Union and the Employer groups to monopolize trade and to increase prices. Rather, is there "stress on union power which has forced the contractors to employ only union labor" and coercion upon the contractors "not to purchase electrical equipment wired or assembled wholly or partly by non-union men outside the Metropolitan Area" (Opinion, pp. 313, 314) (Vid. par. 10 of original complaint, pp. 13-15).

Had petitioners proceeded under their original complaint and proved every allegation thereof, they would, nevertheless, have only proved themselves out of court. To meet the "reversal of judicial precedents" the petitioners in 1937 served an expanded amended complaint, which now charged that the Union had made "contracts with the electrical contractors who, however, were said 'to have been and now are, forced, compelled and coerced by Local 3 to enter into' these contracts for the conduct of their business in the Metropolitan Area and restricting their choice as to the manufacturers from whom they would make their purchases of electrical equipment. And the requested form of injunction remained as in the [original] complaint" (Opinion, p. 314).

The Circuit Court of Appeals noted further that, "The master's opinion stressed the union's economic power" (Opinion, p. 314), rather than an illegal monopolistic agreement between Employers and the Union, and it was only "The voluminous findings filed in 1942 [which] make much more of the conspiracy, or conspiracies; and several conclusory findings allege an intent to give the local manufacturers and contractors power to control the market and the market price".

The injunction as granted follows with only minor changes in wording "the original eight subparagraphs as prayed for in the [original] complaint, and merely adds two more: a 9th against making, carrying out, or seeking to secure the observance 'of agreements or understandings with contractors, manufacturers, or others, restraining, hindering or preventing' the purchase or use of plaintiffs' electrical equipment on the ground that it was not made in New York City or worked on by members of Local 3 or was in competition with equipment made by manufacturers employing members of Local 3" (Opinion, pp. 314, 315; final decree and declaratory judgment, p. 293).

It is fairly to be inferred that the Circuit Court of Appeals in appraising the facts had in mind that the change

of emphasis by the petitioners did not represent a change in factual background but, rather, an effort on the part of the petitioners to fit the facts into the different pattern required by the change in legal precedent.

Legal Precedents, Recent and Remote

The Union's conduct has been predicated on the assumption that Congress by legislative enactment, and this Court by its most recent interpretation thereof, have marked the bounds of lawful Union activity as indicated in the following situations:

(1) A workman, whether as an individual, or jointly with his fellow workmen, has a right to refuse to work if he deems such refusal to be in his economic interest.

The Norris-LaGuardia Act, Section 104(a) proclaims this in letters a foot high: "No Court of the United States shall have jurisdiction" to restrain persons protected by that Act from "ceasing or refusing to perform any work or to remain in any relation of employment", and this Court has held that the equity jurisdiction of the courts was to be limited according to the manifest congressional intent and in accordance with "the light shed by the Norris-LaGuardia Act on the nature of the industrial conflict".

Milk Wagon Drivers' Union, Local No. 753 et al. v. *Lake Valley Farm Products, Inc., et al.*, 311 U. S. 91, pp. 101, 102;
United States v. *Hutcheson*, 312 U. S. 219, pp. 235, 236.

(2) The wisdom or unwisdom of the workman's refusal to work does not affect his right to refuse.

The general rule is stated in *United States* v. *Hutcheson*, *supra*, p. 232. Illustrative of what might seem unwise conduct on the part of workers are the following cases: the *Hod Carriers* case, cited as *United States* v. *Carrozzo*,

37 Fed. Supp. 191, aff'd, per curiam, sub. nom, *United States* v. *International Hod Carriers,* 313 U. S. 539, in which the Union sought to thrust a spoke in the wheel of progress by preventing the use of labor-saving truck mixers; and *United States* v. *American Federation of Musicians,* 47 Fed. Supp. 304, aff'd, per curiam, 318 U. S. 741, in which the Musicians' Union was bent upon eliminating cheap "canned" music from the national market so that "live musicians" could have additional jobs.

(3) The fact that a Union, making agreements for the benefit of its own members, does not concern itself about benefiting the competitors of its members' employers, and does not or cannot enter into similar agreements with such competitors, in nowise affects the legality of such agreements.

In *United States* v. *American Federation of Musicians, supra,* the ultimate goal of the Union was to enter into agreements with the broadcasting studios, which would have the effect of putting the manufacturers of canned music out of business and depriving their employees of employment. The strength of the Musicians' Union was nation-wide and in consequence the effect of their projected agreements with the studios would be equally broad.

In *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U. S. 552, the white employees were the ones who found themselves caught between the upper and the nether millstones of the labor conflict. If the Alliance prevailed, the white employees were out of a job, because, being white, they could in no view of the Alliance's plan receive the benefit of the campaign, which was to gain employment for negroes.

In *Milk Wagon Drivers' Union, Local No. 753, et al.* v. *Lake Valley Farm Products, Inc., et al., supra,* the drivers, members of the defendant Union, wanted for themselves

the maximum amount of employment in delivering milk from door to door to householders, and would, if they could, have put the retail stores, which sold milk to these householders over the counter, out of business so far as such sales were concerned.

In each instance, as in the present case, the success of the Union in achieving its economic purpose in the struggle with the immediate employers of its members, brought or threatened to bring economic misfortune to employers or employees who were, in effect, third parties to the controversy, and who could in nowise participate in the benefits, if any, accruing to the parties to such controversy from the agreement ultimately entered into between them.

(4) The agreement which a Union compels or persuades an employer or group of employers to enter into does not constitute a "combination with a non-labor group", so as to place such agreement within the ban of the Sherman and Clayton Acts.

We are constrained to ask, how else can a union successfully terminate a labor controversy with an employer than by entering into an agreement with the employer embodying the provisions under which they are thereafter to maintain their relations so long as the "armistice" (Opinion, p. 319) continues between them? Clearly, the making of such agreement does not constitute the parties thereto an unlawful combination, if the agreement originates in a labor controversy.

The citation of *United States* v. *Brims*, 272 U. S. 549, as a footnote to the statement in the opinion in the case of *United States* v. *Hutcheson, supra*, that "so long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means", is not authority for the proposi-

tion that a union closed shop and labeling agreement with an employer may be enjoined because the making of such agreement constitutes the parties thereto a forbidden combination. The Circuit Court of Appeals pointed out (Opinion, p. 323) that "the excepting sentence doubtless should not be read with exacting literalness; but in view of the use which has been made of it, we should note that it is not a positive affirmation, but a statement of only restricted reach".

To put it more simply, it would seem that the opinion in the *Hutcheson* case never intended to imply that an agreement concluding, for a limited time, an employer-union controversy would constitute the parties thereto co-conspirators, subject to the penalties of the Sherman and Clayton Acts. The *Brims* case, so far as the statement in question is concerned, is still the law, and the Circuit Court of Appeals does not hold otherwise, writing (Opinion, p. 323), "it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose."

The *Brims* case, obviously, is no longer good authority for any principles enunciated in *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Association*, 274 U. S. 37, in view of the fact that these cases were expressly overruled in *United States* v. *Hutcheson, supra*, wherein this Court said (p. 236):

> "There is no profit in discussing those cases under the Clayton Act which were decided before the courts were furnished the light shed by the Norris-LaGuardia Act on the nature of the industrial conflict."

The Determination Herein Made by the Circuit Court of Appeals Is Not in Conflict With the Decision Made by the Circuit Court in the Ninth Circuit in *Lumber Products Association* v. *United States*, 144 Fed. (2d) 546

If, as we have sought to demonstrate, the interpretation of the Sherman, Clayton and Norris-LaGuardia Acts, so far as they are here relevant, has been made clear and definitive in the recent decisions of this Court, it should be apparent that any seeming conflict between the decisions in the two Circuit Courts is as to matters of *fact* and the application of the settled law to the facts, rather than a conflict as to what the *law* is.

Without a careful examination of the record in the *Lumber Products Association* case, one is unable to determine whether error in the application of the law to the facts has been made therein by the Trial and Appellate Courts. The fundamental issue in cases of the type here presented is a factual one, and the trier, whether a court alone, or a court and jury, must determine that issue in order to permit of a proper application of the accepted principles of law. The issue, as we see it, is whether the Union, in making the challenged agreements with the Employer, was acting in its self-interest, as a labor union, that is, fundamentally and primarily for the benefit of its members, or whether its self-interest was a mere sham and pretence to mask a purely business and profit-sharing arrangement with a non-labor group.

The Circuit Court of Appeals, in the instant case, has held that the facts found justify a conclusion that the respondent was acting in its self-interest as a labor union and, hence, its agreement with the Employer group was not a "combination". The jury in the *Lumber Products Association* case, by its verdict, has found as a fact that the primary object of the arrangement between the parties to the agreement submitted to them for consideration was

a commercial one. Hence, such arrangement did in fact constitute a combination. Whether such latter finding of fact was right or wrong, no conflict of legal interpretation is presented.

Conclusion

It is respectfully submitted that the petition for a writ of certiorari in all respects should be denied.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1944

No. 702

ALLEN BRADLEY COMPANY, et al.,

Petitioners,

against

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.,

Respondents.

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

The petitioners, hereinafter referred to as the "plaintiffs", are a group of manufacturers of electrical equipment. The respondents, variously referred to herein as the "defendants", the "Union," or the "Local Union", are a labor union, known as Local Union No. 3 of the International Brotherhood of Electrical Workers, and certain of its officials.

The action was brought in 1935 by the plaintiffs in the District Court for the Southern District of New York for a declaratory judgment, decreeing that the activities of the defendants violated the Federal Anti-Trust Laws, and asked for an injunction. The issues were, by stipulation, first tried before a Special Master who reported in favor of the plaintiffs. His report was affirmed by the District Court in findings of fact and conclusions of law. The District Court awarded injunctive relief and a declaratory judgment.

The defendants appealed to the Circuit Court of Appeals for the Second Circuit on the pleadings, findings and judgment. The appellate court reversed and dismissed the action, Swan, J., dissenting, in part (145 Fed. (2d) 215; Rec. pp. 305-329).

Upon application of the plaintiffs this Court has granted certiorari.

Complaint and Amended Bill of Complaint

The original complaint was filed December 9, 1935 (Rec. p. 1). On March 31, 1937, the plaintiffs filed an amended complaint (Rec. p. 2). Both complaints are printed in the record (pp. 5-20, 30-60). The importance of the original complaint lies in the fact, as noted by the Circuit Court of Appeals (Op. p. 313) that it confirms that plaintiffs have shifted their factual position "because of the complete reversal of the controlling judicial precedents during the long pendency of this litigation."

The theory of the plaintiffs has at all times been that the defendant Union violated the law by its conduct in relation to certain non-labor groups. In the original complaint it is charged that the Union coerced these groups into taking the action complained of. No claim of conspiracy between the labor and non-labor groups is, however, asserted. In the amended complaint it is charged that the two groups entered into contracts, which violated the anti-trust laws, as a result of the defendants' coercive pressure. Continuing this progressive shift in emphasis, plaintiffs in the findings, which were filed in 1942, "make much more of the conspiracy, or conspiracies; and several conclusory findings allege an intent to give the local manufacturers and contractors power to control the market and the market price" (C. C. A., Op. p. 314).

Let us turn now to a consideration of the major elements of the amended complaint. It is alleged that the plaintiffs are corporations manufacturing electrical equipment, which

is sold in interstate commerce, and for which there was a profitable market among owners of buildings, contractors and other users until interfered with by the defendants and their associates (pars. 2-16, pp. 31-38). The defendant is a labor union with a membership of many thousands of journeymen electricians and electrical workers in the City of New York and its vicinity, referred to as the Metropolitan Area. The Union claimed jurisdiction over all electrical wiring work and installation of electrical equipment in said area (par. 17, p. 38). The individual defendants are officers of the Union (par. 19, p. 39).

In the Metropolitan Area numerous contractors employing electricians, such as comprise the membership of the Union, are engaged in the installation of equipment of the type manufactured by the plaintiffs (par. 22, p. 40). Most of these contractors have closed shop agreements with the Union under which they are required to stipulate in their contracts with owners, builders, etc., that the contractors must supply the equipment which is to be installed (par. 23, pp. 40-41). Many of the contractors are grouped in associations, which worked under similar agreements with the Union (pars. 24-26, pp. 42-43).

The coercive means employed by the Union in compelling acceptance of these restrictions by the contractors were the threat of sympathetic strikes by various crafts with which the Union had working arrangements, so that no architect, owner, etc., dared employ a non-conforming contractor, also the forbidding of members of the Union to work for a contractor not operating under the agreement, the picketing and boycotting of buildings or retail establishments, hotels, etc., if they employed electrical contractors who were not in agreement with the Union or who employed electricians not members of the Union (par. 28, pp. 44-46).

Contractors who were members of the associations and other contractors working under agreements with the Union were parties to another agreement with the Union provid-

ing for observance of a Code of Fair Competition requiring all bids for contracts in excess of $1,000 to be filed with an administrative agency of the Code, thereby affording the Union a ready means of obtaining information as to the electrical contracts and bids governing work in the Metropolitan Area. This source of information was utilized by the Union in connection with the enforcement of the boycott further described in the complaint (par. 29, p. 47).

Approximately fifteen manufacturers producing electrical equipment within the Metropolitan Area entered into an agreement with the Local Union for the exclusive employment of its members upon the understanding that the Union would protect these manufacturers from competition on the part of other manufacturers of equipment outside of the City of New York, such as the plaintiffs produced, with resultant artificial increase of sales at high prices (par. 30, pp. 47, 48).

The defendants and other persons are engaged in an unlawful combination and conspiracy in violation of the Sherman Act, etc., by closing the market to electrical equipment built outside the City of New York by workers other than members of the International Brotherhood, thus securing a practical monopoly of the market for equipment manufactured by the members of the Local Union in the Metropolitan Area. The conspiracy has drawn into its ranks numerous electrical contractors and manufacturers within such area. Part of the program of the conspiracy is to restrain and destroy trade in electrical equipment of plaintiffs between their places of business outside the City of New York and the Metropolitan Area, because the equipment is not made exclusively by members of the Local Union within the area and because its sale would conflict with the monopolistic purpose of the defendants to secure a market for equipment bearing the label of the Local Union (par. 31, pp. 48-49).

Paragraphs 32 and 33 (pp. 49-55) recite various acts allegedly done by the defendants in furtherance of the conspiracy. These allegations are largely repetitious of what had already been alleged at an earlier point in the complaint.

None of the members of the Local Union have ever been employees of the plaintiffs in their factories and this suit is not between employers and employees arising out of differences with respect to terms or conditions of employment (par. 34, p. 55).

The relief prayed for is as follows (pp. 56-60):

A. A declaratory judgment holding that the conspiracy is in violation of the Sherman Anti-Trust Law, as amended and supplemented.

B. That an injunction issue restraining the defendants from inducing or seeking to induce any persons to refrain from purchasing electrical equipment from the plaintiffs or diverting business from plaintiffs upon the ground that the assembling and wiring of the equipment is performed in factories of the plaintiffs by workers not members of the International Brotherhood, or preventing plaintiffs from securing orders upon the ground that the equipment is assembled and wired in such factories, or requiring owners, contractors, etc., to enter into agreements not to buy from plaintiffs or inducing persons to refuse to handle any of the plaintiffs' products while at the same time they are permitted to handle or install products of a competing manufacturer, or adopting rules forbidding members of the Local Union to handle, install, etc., such products, or inducing any persons not to handle or install the same unless, after being wired and assembled by plaintiffs in their respective factories, the equipment is disassembled and unwired and shipped into the Metropolitan Area in an unfinished state.

The original complaint, as the Circuit Court of Appeals notes (Op. pp. 313, 314), stressed the "union power which has forced the contractors to employ only union labor and 'through their [defendants'] said control over said electrical contractors' has coerced the latter not to purchase electrical equipment wired or assembled wholly or partly by non-union men outside the Metropolitan Area."

Paragraph 10 of the original complaint (pp. 13-15), which detailed the acts of the Union in exercising such coercion on the contractors, is wholly barren of any charge that the coercion was exerted for the purpose of benefiting local manufacturers to the disadvantage of the plaintiffs, which charge forms so prominent a part of plaintiffs' amended complaint (pars. 30-32, pp. 47-54). Such local manufacturers, in fact, are not even mentioned in the original complaint.

The prayer for injunctive relief in both the original and amended complaints is substantially identical. The most significant portion in such prayer is subdivision (f) (pp. 19, 59), reading:

> "(f) Inducing, ordering, directing or requiring any person or persons to refuse to handle, connect, install or work upon any of the electrical equipment mentioned in subdivision (a) of the foregoing, produced by the manufacturing plaintiffs and the members of National Electrical Manufacturers Association aforesaid, or any of them, while said person or persons are permitted to handle, connect, install or work upon similar products made, wired, assembled or sold *by any competing manufacturer or manufacturers within the Metropolitan Area aforesaid*" (p. 59).

In the original complaint there is no suggestion that the local manufacturers are the partners of the Union in a conspiracy to monopolize for such manufacturers the production of electrical equipment and the increase of prices therefor, whereas in the amended complaint such charge becomes the foundation stone in the structure of illegality.

The prayer for relief outlined above, however, continues the same. The Court is asked to forbid the Union to tell its members not to install plaintiffs' products so long as these members are authorized to install the competing products of local manufacturers.

It is clear that the conspiracy with the manufacturers, which is not pleaded in the original complaint, is only an afterthought, and that plaintiffs' complaint is not against a monopolistic conspiracy but against the preference displayed by the Union toward manufacturers employing members of the Union as against manufacturers not employing its members.

Answer to the Amended Complaint
(Rec. pp. 61-75)

The answer denies, generally, the allegations of unlawful combination and conspiracy and, specifically, the jurisdiction of the Court, and sets up, as separate defenses, pleas of adequate remedy at law, want of jurisdiction over the subject matter, and the applicability of the Norris-LaGuardia Act because of the existence of a labor dispute.

Decision of the Special Master
(Rec. pp. 135-154)

A stipulation dispensing with the printing of the Special Master's decision recites that the findings of fact and conclusions of law incorporated in the final decree and declaratory judgment entered by the District Court are the same as those made by the Special Master, with the exception of certain modifications and three new findings of the District Judge. These are neither substantial nor material.

Statement of Facts

Inasmuch as the testimony of the hearings forms no part of the record on appeal, the facts reviewed by the Circuit Court of Appeals are to be found in the opinion of the Special Master (Rec. pp. 80-134), and the findings of fact and conclusions of law incorporated in the final decree and declaratory judgment (Rec. pp. 173-295).

The opinion of the Circuit Court comments pointedly:

> "The industry of counsel and of the special master is to be commended; but we are constrained to say that the very verbosity and superfluity of the findings have not aided decision as much as doubtless had been expected" (Op. p. 312).

The plaintiffs by an eclectic process that places emphasis on findings of fact and conclusions of law not closely relevant to the narrow issues here involved have succeeded in condensing these voluminous findings within the compass of half a dozen pages. In so doing, however, they have sought to create the impression that the defendants were not, in doing what they did, engaged in the customary and recognized activities permitted to a labor union but, rather, were associating themselves as commercial partners of the employers of the Union's members in monopolistic trade practices and the artificial enhancement of prices for the private benefit of the employers.

It is not the writer's intention to fall into the same error of distorting the effect of the findings as a *whole* by stressing specific findings taken out of their context. On the other hand, to attempt to summarize all the findings would only serve to obscure the specific issues in dispute.

The Circuit Court of Appeals with the voluminous findings of fact before it, and aided by the report of the Special Master, likewise comprising part of the record, has taken a view of the facts at variance with that presented by the plaintiffs in their brief and confirming the

contention of the defendants that the Union was acting in its own self-interest and not in association with the employers in the interest of the latter. The Circuit Court of Appeals wrote (Op. p. 315):

> "Nevertheless, on any judicious view of the case, we do not believe the motive or intent of defendants can be at all in doubt; and we are left only to appraise its legal validity and effect. That the union and its officers were acting wantonly, corruptly, or even benevolently for the mere benefit of their co-partners, and were not at all times acting for what they conceived to be the self-interest of the union and its members, is nowhere asserted, but is negatived by the *general import of all the findings and explicitly by several,* of which Finding 361 is typical. That finding, after stating that the defendants and those acting in concert with them were 'in no way concerned with the working conditions, rates of wages or union affiliations of the employees in plaintiffs' factories outside the Metropolitan Area,' continues: 'The ban on the plaintiffs' products is and has been imposed and maintained by the aforesaid combination of the defendants, the local union contractors and the local union manufacturers, solely because the plaintiffs do not, or because of their geographical location outside the Metropolitan Area cannot, employ members of Local No. 3 in their factories outside the Metropolitan Area.' *In other words it was a make-work campaign for the benefit of union members.*" (Emphasis supplied.)

The groups involved in or affected by the activities of the Union, as recited in the findings, are the following:

(1) *The Defendants* (Findings 86-139, pp. 195-208). The Union has a large membership. It is an effective factor in compelling persons within the City of New York, who want to use or install electrical equipment, to give employment to its members. Those who either refuse to give such employment or are unable to do so experience difficulty in marketing their products in the Metropolitan Area. It is affiliated with the International Brotherhood of Electrical Workers, American Federation of Labor,

which has a membership of some 300,000. At the time of the trial the Local Union's own membership, comprised largely of journeymen electricians and workers fabricating and installing electrical equipment, etc., similar to that which the plaintiffs produced, numbered 15,000.

The Local Union asserted jurisdiction in the Metropolitan Area. During the years of the depression it had in an effort to obtain work for its members increased its membership and extended its organizational activities, always, however, remaining within the general field of production and installation of electrical equipment.

Prior to 1928 the Local Union's membership had consisted of journeymen and helpers, who were engaged in fabricating and installing electrical equipment in buildings. By a merger in that year with another local the defendant Union absorbed workers engaged in wiring and assembling lighting fixtures.

In 1934 shop men engaged in manufacturing switchboards and other equipment were taken in, and in 1935 the Union's charter was amended so that the Union might receive into its membership workers primarily engaged in the manufacture of electrical equipment.

The membership of the Local Union was divided into various classifications, embracing different types of employees engaged in the electrical industry.

(2) *The Plaintiffs* (Findings 1-85, pp. 175-195). The plaintiffs are manufacturers of electrical equipment, which they are interested in marketing in the Metropolitan Area for installation and use in buildings located therein. Plaintiffs' factories are, for the most part, situated outside of the Metropolitan Area to which the territorial jurisdiction of the Union is restricted.

The labor record of the plaintiffs, viewed through the eyes of the Union, was not good. Most of the plaintiffs are non-union shops. A number of them have progressed to the point of negotiating with a bargaining representative designated by the National Labor Relations Board

after an election or other proceeding, and some, at the time of the trial, were still awaiting the outcome of such elections. A small number of them have agreements with local unions other than the defendant Union. These, for the most part, are C.I.O. or "independent" unions.

In one instance the defendant Union had been designated collective bargaining agent for a plaintiff in the City of New York, but as of the date of the trial no agreement had as yet been reached (Findings 57-59, pp. 187-188).

In another instance, when the defendant Local Union had tried to obtain a collective bargaining agreement for a plant in Newark, the plaintiff in question had refused to negotiate (Findings 81, 82, p. 193).

In still another instance, after the defendant Union had enrolled many employees in a plant of one of the plaintiffs located in Bronx, New York City, that plaintiff had declined to negotiate with or to recognize it as bargaining agent, and shortly thereafter had moved part of its plant out of New York and discharged many of the employees who were members of the defendant Local Union (Findings 23, 24, p. 180).

At the time of the trial none of the plaintiffs were operating under an agreement with the defendant Local Union (Finding 85, p. 195).

We, thus, have a group of plaintiffs who manufacture either in non-union shops or under bargaining agreements with unions not affiliated with the International Brotherhood or with the defendant Local Union No. 3 itself. They produce various types of electrical equipment, which they ship into New York City, there to be sold, used and installed. The defendant Local Union No. 3 says, in effect, to the plaintiffs: "You can produce this equipment wherever you choose. You can ship the finished product into the City of New York and there offer it for sale. You can install it in buildings, if you wish and are able to. We, however, will not do the installing and we will picket any place where installation is done by persons other than our members."

Further light on the employment conditions with which the Union was confronted, particularly in the years of depression, and to improve which the Union has ever since fought, is cast by the opinion of the Special Master, who wrote (Rec. p. 100):

> "During the period between the financial crash of 1929, and 1934, unemployment was so general that only about one-fourth of the members were employed."

And (Rec. p. 101):

> *"Reaction on Labor Conditions in the Defendant Union Resulting from Improved Techniques in the Making of Electrical Equipment.*
>
> "The developments in electrical equipment which have been reached in the improvement of electrical apparatus for modern uses are responsible for the controversy involved in this case."

Following the foregoing sentence the Special Master stresses the history of such improved techniques and the consequent encroachment on the job opportunities of electricians, members of the defendant Union, engaged in the installation of such equipment. Originally the apparatus to be installed was comparatively simple and the journeymen electricians "did practically all of the fabrication on the job". (Rec. p. 101).

But, as the equipment in the development of the modern building became more complicated, the business of fabricating switchboards, accordingly, became a factory job (Rec. p. 101). In 1932 and 1933 "the building industry in New York was confronted by a falling off of business to practically nothing. As the defendant Union was almost entirely dependent upon installation in new construction work, the journeyman worker was confronted by conditions of acute distress" (Rec. pp. 103-104).

The Union officials had observed that as a result of a boycott of prefabricated lighting fixtures, a number of members of the Union succeeded in obtaining employment

in wiring such fixtures in *shops* set up for the purpose in New York City (Rec. p. 104). From this beginning the Union proceeded to a unionization of local switchboard factories as a step to "preserve the work opportunities of the local union" (Rec. p. 105).

A number of findings of fact recount the steps taken by the Union to counteract such encroachment upon the work opportunities afforded its members by prefabrication of electrical equipment in factories established beyond the Metropolitan Area. A major step was the unionization of those factories which were within its reach, namely, those in the City of New York and vicinity. Such unionization provided additional job opportunities for members and, at the same time, enabled the Union to regulate the jurisdictional question of what work was to be done in the factories and what at the place of installation. To implement its policy the Union instructed the workers engaged in installation to see to it that they did not install any equipment which failed to carry the Union label as an indication that other members of the Union had been employed in the manufacture of such equipment (Op. pp. 308-311; Findings 231-234, pp. 240-244; Finding 246, p. 245; Findings 252-256, pp. 246-248; Findings 258, 259, p. 249; Findings 267-283, pp. 252-257; Findings 285-291, pp. 257-260; Findings 294, 295, 297, 299, pp. 261-262; Findings 308-312, pp. 265-266; Findings 315-320, pp. 267-268; Finding 321, p. 268; Findings 324-326, pp. 269-270; Finding 329, pp. 270, 271; Findings 339, 340, p. 274; Finding 342, p. 275).

(3) *Groups of Employers Within the Metropolitan Area.* The Union was unable to enter into labor relations with the plaintiffs because they were outside the territorial jurisdiction of the Union. Employers within such area fell into two classifications: (1) electrical contractors, and (2) manufacturers of electrical equipment.

Electrical contractors (Findings 140-155-A, pp. 208-213) furnish and install electrical equipment in the Metropoli-

tan Area and require the services of skilled electricians, such as form the membership of the defendant Local Union. More than 90% of the contractors were finally compelled or persuaded by the defendant local to enter into closed shop agreements with the Union. Under such agreements the contractors were required to buy the electrical equipment which was to be installed on their jobs. This was to enable the Union to insure through the affixing of union labels on such equipment, the observance of its rule that only labeled equipment produced by union members would be installed by union members (Findings 260-262, pp. 249-250).

Originally half a dozen concerns were engaged in the manufacture on a small scale in the Metropolitan Area of certain types of electrical equipment. The Union began its campaign of unionization in 1933 and, overcoming strong employer resistance, succeeded by 1934 in procuring its first agreement providing for substantial wage increases, a closed shop and the affixing of union labels to the products manufactured (Findings 170-172, pp. 218-220).

Thereafter, during the years 1935, 1936, 1937 and 1938,* the Union, continuing its intensive organizational activities among the Metropolitan manufacturers and through recourse to the traditional methods of labor, namely, strikes, picketing, circularization, enrollment of members from among the employees of shops theretofore conducted as non-union, etc., was able to obtain similar agreements from additional manufacturers in the electrical field. In none of these cases did the local manufacturers, who entered into these agreements, voluntarily approach the Union with offers to enter into such agreements. The agreements were, in fact, as characterized by the Circuit Court of Appeals, merely "armistices" in a protracted conflict (Op. p. 319;

* It is interesting to note that the Union's organizational campaign was being carried on in the face of employer opposition for fully three years after the commencement of this action and for about one year during which the hearings were in progress (Rec. pp. 2-3).

Finding 173, p. 220; Finding 204, p. 231; Findings 233-235, pp. 241, 242; Finding 256, p. 248; Findings 308-310, pp. 265, 266; Findings 315-317, p. 267; Findings 324, 325, p. 269).

To implement these agreements the Union directed its members to install only such equipment as bore the union label and penalized its members for infractions of this rule. This pressure was sufficient to induce local contractors to buy only such products as were thus labeled, even though the price was higher than that listed for unlabeled articles. The plaintiffs, accordingly, lost business they would otherwise have had in the Metropolitan Area, and the local manufacturers, in turn, benefited by the higher prices obtained (Findings 168-187, pp. 217-225).

For a comparatively brief period the Union "to obtain information as to electrical contracts and bids covering work in the Metropolitan Area in connection with the enforcement" by it of its instructions to its members to install only the equipment so labeled availed itself of the existence of a Code of Fair Competition to which certain of the associations of electrical contractors, as well as individual contractors working under agreements with the local, were parties (Amended Bill of Complaint, par. 29, p. 47).

Concerning the Code, the Circuit Court of Appeals writes, in part (p. 310):

> "This code was a part of the union contract with several contractor associations in 1935, but it was disapproved by the International President of the I. B. E. W. and the record is not entirely clear whether thereafter it remained a part of the union contract until the contractors themselves gave it up in 1939. At any rate, it is found that the union filed no complaints under the code and did not share in the fines or itself take any action against a contractor or cause its members to refuse to stay in the employ of disciplined contractors."

The Circuit Court of Appeals further appends a footnote to the foregoing, reading (p. 310):

> "The master's opinion states only that there was a sharp conflict in the evidence; the findings, however, are general and conclusory to the effect that the union was bound by the code."

The discontinuance of the Code by the contractors in 1939, fully two years before the Special Master's opinion was handed down (p. 134) and four years before the entry of the decree herein in 1943 (pp. 294-295), and the exoneration of the Union from complicity in irregularities charged to a few of the contractors (Finding 167, p. 217), demonstrate the irrelevancy of the circumstance to the controversy here in issue, namely, the fundamental right of members of the Union to cease work if asked to install electrical equipment other than such as had been manufactured by members of the Union.

The economic pressure exerted by the Local Union was traditional in form. Over a period of years, as noted above, by strikes, picketing and refusal to have its members install electrical equipment not bearing the label indicative of the fact that others of its members had fabricated such equipment, the Local Union was able to wrest from the contractors and manufacturers in this area a series of agreements for closed shops, both as to the fabrication and installation of such equipment. Wages of its members were increased, hours reduced and work opportunities multiplied (Op. pp. 308-311; Finding 89, p. 196; Findings 93-95, pp. 197, 198; Findings 118-124, pp. 203-205; Findings 127-131, pp. 206-207; Findings 168-177, pp. 217-221; Finding 186, pp. 224, 225; Finding 217, pp. 235-236; Finding 235, pp. 241-242; Findings 238, 239, pp. 243-244; Finding 256, p. 248).

That was the Union's original purpose; that was the goal achieved.

The buying public, consisting of owners, builders, architects, the municipality and its agencies, and public utilities, requiring the services of the contractors, were in great measure constrained to engage them on terms that did not conflict with the contractors' agreements with the Union. The increased cost of production and installation resulting from higher wages paid for shorter hours by the manufacturers of the equipment and by the contractors who installed it were passed on to the public. But this is a condition which is a not unusual consequence upon the consummation of closed shop and union labeling agreements.

In the meantime the plaintiffs, who, with certain exceptions, could not get the members of the defendant Union to install their electrical equipment because it had not been produced by other members of their Union, found it difficult to sell such equipment in the Metropolitan Area. The public would not buy equipment which the Union electricians refused to install. This is the entire basis of plaintiffs' complaint.

The Union's purpose in engaging in the activities complained of is clearly set forth in a number of findings. Such purpose was the obtaining of higher wages per hour and of shorter hours of employment (Finding 55, p. 248) and *"to make, obtain, secure, maintain, preserve and defend work opportunities for its members, all for the protection of their self-interest"* (Finding 256, p. 248; see also Findings 365, 366, p. 284).

Conclusions of Law
(1-26, pp. 286-290)

The boycott of electrical equipment and materials not manufactured by members of the defendant Union for use in New York City, and the requirement that the wiring and assembling of equipment be done by members of the Local Union, were found not to be legitimate labor activi-

ties, and hence not exempt under the Sherman Act. No labor dispute as defined in the Norris-LaGuardia Act existed and its provisions were, therefore, inapplicable. The activities of the Local Union in calling strikes on electrical operations conducted by the various New York City departments for the purpose of obtaining employment for defendants' construction members were unreasonable and unlawful.

Plaintiffs were, accordingly, held to be entitled to a declaratory judgment that the combination and conspiracy and the acts done and being done in furtherance thereof, as set forth in the findings of fact, were unlawful and contrary to the Sherman Anti-Trust Act, etc.

Declaratory Judgment
(par. 5, p. 290)

The Court declared the combination and conspiracy and the acts done and being done, etc., as unlawful and contrary to the Sherman Act, as amended and supplemented.

Injunctive Relief Decreed
(par. 6, pp. 291-294)

Subdivisions (a) to (h) of the relief awarded follow closely the prayer for relief in the complaint and amended complaint. Items (i) and (j) provide for additional relief, not specifically sought in such complaints. The relief granted is, generally, as follows: Against

(a) and (b) Inducing persons not to buy from the plaintiffs or not to perform any contracts to buy from them;

(c) Diverting business from the plaintiffs on the ground that the wiring of the equipment involved was performed in plaintiffs' factories; or upon the same ground

(d) Preventing plaintiffs from securing orders; or

(e) Requiring owners or contractors to agree not to buy such equipment from the plaintiffs; or

(f) Inducing persons to refuse to handle plaintiffs' products; or

(g) Adopting rules forbidding such persons to handle same; or against

(h) Inducing such persons to refuse to handle the products unless disassembled or unwired and reassembled by members of the local; or

(i) Making agreements with contractors and others restraining purchases from the plaintiffs on the ground that the products were not worked upon by members of the defendant local; or

(j) On similar grounds taking any action to prevent or burden the purchase, installation, assembling, etc., of electrical equipment produced by the plaintiffs.

Concerning the relief so awarded, the Circuit Court of Appeals comments (Op. p. 315):

"The broad scope of the injunction is such as to reach peaceful attempts by the defendants—among whom are included the individual officers of the union—to induce any person (thus even a union member) not to deal with plaintiffs, while it is most doubtful if the unnamed 'confederates' are reached at all. Cf. Federal Rule 65 (d), supra."

POINT I

The injunction issued and declaratory judgment awarded to the plaintiffs by the District Court erroneously barred the defendants from engaging in traditional labor union activities which within the definition of the Norris-LaGuardia Act are lawful activities.

A. The activities which were erroneously enjoined or declared illegal.

The writ of injunction (pp. 296-300) enumerated in ten sweeping subdivisions those things which the defendants and all persons acting in aid or in conjunction with them were forever forbidden to do. Stripped of repetition and fine distinctions, the injunction forbade the Local Union to tell its members not to handle and install electrical equipment not manufactured by its members in shops having closed shop agreements with the local.

Whatever the law may once have been and whatever injunctive or other relief the plaintiffs might formerly have been entitled to upon the basis of the facts established, one thing is clear and that is that an injunction of such scope and intent directed against a labor union forbade it to do that which the law enacted by Congress and the most recent pronouncements of the Supreme Court of the United States definitely hold a labor union may do.

The Circuit Court of Appeals expresses this view in its opinion in the following language (p. 321):

> "Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, Section 20, viz., as restraining Local 3 and its officers 'from terminating any relation of employment, or from ceasing to perform any work or labor * * * or from ceasing to patronize * * * any party to such dispute, or from recommending, advising, or persuading others by

peaceful and lawful means so to do.' 29 U. S. C. A., Section 52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendants set forth in the findings."

It is manifest that a Court, which renders a judgment declaring certain acts to be illegal, need grant the plaintiff no injunctive relief to apprise the defendant that its continuance of the acts thus declared illicit is at the peril of the defendant. Accordingly, though the Norris-LaGuardia Act and legal precedent may forbid the issuance of an injunction and the Court itself may be disinclined to grant one, the Court by a declaration that certain acts are illegal achieves the same result as through the issuance of a sweeping injunction. This case illustrates the actual operation of the procedure.

The all-embracing 23rd conclusion of law read:

"23. Plaintiffs are entitled to a declaratory judgment declaring that the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the * * * the Sherman Anti-Trust Law, as amended and supplemented."

There are 374 findings of fact based on 23,000 pages of testimony, and the defendants dared not move in any direction lest they should overstep that which was thus held to be illegal. Who could guarantee that at some future time no Court would rule that any single act embodied in these 374 findings was an act "done and being done in furtherance" of the combination and conspiracy so adjudged illegal? Let us select some of these findings at random by way of illustration:

Finding "173" (p. 220), attempts of the local to obtain improved working conditions through strikes against manufacturers.

Finding "197" (p. 228), the requirement that electrical contractors doing work in the Metropolitan Area employ members of Local No. 3 exclusively (a closed shop).

Finding "199" (p. 229), the picketing with "unfair signs" of places of business of electrical contractors not working under closed shop agreements with the local.

Finding "209" (p. 233), the calling of strikes on New York City projects involving electrical construction work to prevent employment of electricians not belonging to the local, in order to obtain and enlarge the work opportunities of the construction workers of the union.

Finding "213" (p. 234), the "wresting" of work from American Federation of Labor union trades by jurisdictional strikes interfering with construction operations.

We need not labor the point by further example, but we do not yield to the suggestion that the declaration implied no illegality in these practices. In the first place, the declaratory judgment was unlimited in application, and what is worse from the Union's point of view, there was imposed upon the Union the perilous task of determining when repetition of one of these normally legitimate labor activities would be held by virtue of the judgment to come under the ban and to constitute a basis for treble damage actions or other relief. Picketing by the defendant of a manufacturer in the Metropolitan Area in an attempt to obtain a closed shop agreement from such manufacturer could be held violative of the injunction as thus amplified and extended by the declaration of illegality.

The Circuit Court of Appeals commented upon the all-inclusive scope of the injunction in the following language (Op. p. 313):

"Here there is an added difficulty in the incorporation of all the findings in the judgment and their in-

clusion by express statement in the declaration of invalidity and by implication in the prohibition of the injunction. * * * Labor union officers and members are entitled to a more direct and succinct statement of the illegalities of which they are held guilty and which they must cease under penalties of fine and imprisonment."

B. The object of the defendant Union in doing the acts erroneously enjoined or declared illegal by the District Court was to obtain for its members additional job opportunities and to protect those job opportunities thus secured or already possessed.

The plaintiffs alleged and the Special Master agreed that there was a fundamental weakness in the defendants' assertion that its acts were done in the course of a labor controversy. The "34th" paragraph of the complaint (Rec. p. 55) states plaintiffs' position, which was adopted by the Special Master whose opinion reads (Rec. p. 93):

> "The objective of the combination and the conspiracy was not to carry on the unionization, or any change or improvement in working conditions in the factories of the plaintiffs outside of New York State. In the case at bar, business manager Van Arsdale and his associates frankly stated that they were in no way concerned with the working conditions, the rate of wages or the union affiliations of the plaintiffs' factories. It was immaterial to them whether members of other locals of their own union were employed by the plaintiffs."

And further (Rec. p. 94):

> "No matter what any one of the plaintiffs might have done at any one of its factories, with regard to wages, hours or other terms or conditions of employment, it could not have avoided the absolute exclusion by the local union, in conjunction with the contractors and manufacturers, barring its products of the proscribed types from the New York City market and stopping that activity of its interstate commerce."

The defendant Union fully agrees that it was in no way concerned with improving the conditions of the workers in the factories of the plaintiffs.

The District Judge, in his memorandum opinion, based his affirmance of the Special Master's determination upon a different ground, discussed herein, *infra* pages 40-41, but in the Court's findings numbered "367", "368" and "369" (pp. 284-285) it adopted virtually unchanged, the corresponding findings of the Special Master, to the effect that there was no conflict between the Union and the contractors or manufacturers having agreements with it concerning the terms or conditions of employment of *plaintiffs'* employees outside of the City of New York, and further that there was no desire on the part of the defendant Union to bring about any modification of working conditions maintained by plaintiffs at their said plants outside the Metropolitan Area.

Plaintiffs' view of the law, therefore, is that for a labor controversy to exist it must appear that the defendant Local is seeking to alter the working conditions of the *plaintiffs'* employees. That the Union is seeking to benefit the working conditions only of its *own members* is, it is argued, not the basis for a labor controversy.

This position is clearly erroneous. So far as the defendants are concerned the plaintiffs and their employees are mere bystanders to the labor dispute, which here existed. The dispute was not between the defendant Union and the plaintiffs or the plaintiffs' employees, who are outside defendant's territorial jurisdiction. It was, rather, between the defendant Union and those manufacturers and contractors who were within such jurisdiction. With these latter, as appears beyond all controversy from the findings of fact herein made, an intensive campaign of organization on the part of the defendant Union was necessary before that labor dispute was temporarily resolved in closed shop agreements (see *supra*, pp. 14-15). In the course of *that* dispute the defendant Union successfully maintained the posi-

tion that it would not permit any of its members to work on electrical equipment or to install such equipment unless a Local 3 label established that it had been manufactured by the hands of its members.

This prospect is a bleak one so far as the plaintiffs are concerned. It is bleak, however, not because it is illegal, but because the defendant Union is strong and its membership is disciplined. If the defendant Union were weak or its members did not realize wherein their economic advantage lay, the plaintiffs would not be so seriously affected within the Metropolitan Area by these legitimate activities of the Union.

Lest the position of the defendant Union as thus bluntly stated—and sanctioned by both statute and judicial precedent—may seem too uncompromising, it should not be overlooked that the Metropolitan Area is a great and populous territory holding almost 10 percent of the population of the United States, and that factories have been established outside that area or removed from within it with a view, as is commonly known, to avoiding the pressure of the Union within the area for improved working conditions. Once they have been thus removed, there is little that the Local Union is able to do outside its jurisdiction to ameliorate the situation. The labor record of the plaintiffs, from the viewpoint of the defendant Union, as illustrated by the findings of fact, is not one over which we might expect the defendant Union to become enthusiastic (pp. 10-11, *supra*).

C. The Norris-LaGuardia Act and recent Supreme Court decisions interpreting it constitute legal justification for defendants' acts.

Labor unions are admittedly combinations whose activities are in restraint of trade. It is a historical fact that for a time all their activities were considered to be those of *unlawful* combinations. Gradually, they gained for themselves immunity from charges of illegality as to an increasingly broad field of activities until today there is a

well-defined and still growing area within which these combinations, though still acting in restraint of trade, are held to be *lawful* combinations. In this connection the Circuit Court of Appeals wrote as follows (Op. 315, 316):

> "For half a century and against strong popular, political, and legislative pressure, the courts struggled to resolve the anomaly of applying a statute forbidding combinations in restraint of trade to a social organism which must depend on united effort for its existence and upon at least certain restraints of trade as a reason for its being. Finally, at long length the Supreme Court boldly announced what must be taken as an abandonment of the attempt. The case which most significantly marks this change is *United States* v. *Hutcheson*, 312 U. S. 219, 231, 236, where the majority of the Court through Mr. Justice Frankfurter made clear that the Sherman, Clayton and Norris-LaGuardia Acts must be read together as 'interlacing statutes' presenting 'a harmonizing text of outlawry of labor conduct,' and that 'the Norris-LaGuardia Act reasserted the original purpose of the Clayton Act by infusing into it the immunized trade union activities as redefined by the later Act.'"

Illustrative of this change of position are the following cases of recent adjudication:

In the case of *Milk Wagon Drivers' Union Local No. 753, et al.* v. *Lake Valley Farm Products, Inc., et al.*, 311 U. S. 91, dec. 1940, the Supreme Court said (p. 101):

> "The Norris-LaGuardia Act—considered as a whole and in its various parts—was intended drastically to curtail the equity jurisdiction of federal courts in the field of labor disputes."

And again, at page 102:

> "The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over half a century. Hostility to 'government by injunction' had become the rallying slogan of many and varied groups. Indeed, as early as 1914 Congress had responded to a widespread public

demand that the Sherman Act be amended, and had passed the Clayton Act, itself designed to limit the jurisdiction of federal courts to issue injunctions in cases involving labor disputes."

In *United States* v. *Hutcheson*, 312 U. S. 219, dec. 1941, the Supreme Court said (p. 235):

> "Such legislation must not be read in a spirit of mutilating narrowness. • • •
>
> "The relation of the Norris-LaGuardia Act to the Clayton Act is not that of a tightly drawn amendment to a technically phrased tax provision. The underlying aim of the Norris-LaGuardia Act was to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction. This was authoritatively stated by the House Committee on the Judiciary. 'The purpose of the bill is to protect the rights of labor in the same manner the Congress intended when it enacted the Clayton Act, October 15, 1914 (38 Stat. L., 738), which act, by reason of its construction and application by the Federal courts, is ineffectual to accomplish the congressional intent.' The Norris-LaGuardia Act was a disapproval of *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443 and *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Association*, 274 U. S. 37, as the authoritative interpretation of Section 20 of the Clayton Act, for Congress now placed its own meaning upon that section."

And at page 236:

> *"There is no profit in discussing those cases under the Clayton Act which were decided before the courts were furnished the light shed by the Norris-LaGuardia Act on the nature of the industrial conflict."* (Emphasis supplied.)

The *Duplex Printing Press* and *Bedford Cut Stone* cases, which were, thus, overruled by the Supreme Court in 1941, constituted the anvil on which many a labor injunction of a bygone day was hammered and shaped under the author-

ity of the Clayton Act. These celebrated cases, one need hardly remark, held that unless a direct employer and employee relationship existed between the parties in controversy the refusal on the part of the workers to handle products made by non-union hands constituted a secondary boycott violative of the Sherman Act.

For the law as it is now construed we turn to *United States* v. *American Federation of Musicians*, 47 Fed. Supp. 304, D. C., N. D. Ill., aff'd per curiam dec. 318 U. S. 741, February, 1943. Such per curiam decision reads, briefly:

> "The judgment is affirmed. Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. 101-115; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *Milk Wagon Drivers' Union* v. *Lake Valley Co.*, 311 U. S. 91."

The statute referred to is, of course, The Norris-LaGuardia Act.

The facts in the case are given in the opinion of the District Court from which a direct appeal was taken by the Government to the Supreme Court. The suit was brought by the United States to enjoin defendant Union from engaging in certain activities allegedly in violation of the Sherman Act. On the Government's motion for a temporary injunction and the defendant's motion to dismiss the complaint, the injunction was denied and the complaint dismissed.

The Union had a membership of some 140,000, which comprised virtually all musicians "making music for hire" in the *entire United States*.

The complaint charged that for the purpose of destroying all interstate commerce in phonograph records and electrical transcriptions, monopolizing all performances of musical entertainment, eliminating competition between transcribed music and music produced by live musicians, defendant conspired to (a) prevent manufacture and sale of all phonograph records and electrical transcriptions; (b) eliminate from the market all manufacturers, distribu-

tors, jobbers and retailers of such records; (c) prevent radio stations from broadcasting musical compositions thus recorded; (d) prevent the use of phonograph records and juke boxes located in various establishments; (e) prevent the use of phonograph records in the home; (f) prevent the sale of phonograph records to radio stations by requiring manufacturers to boycott all distributors, jobbers and retailers who sold such records to radio broadcasting stations and juke box operators; (g) eliminate all musical performances for the radio, except by members of the defendant Union; and (h) require radio broadcasting stations to hire unnecessary "stand by" musicians, who were members of the defendant local, by requiring radio networks to boycott stations which refused to meet the demands for hiring "stand by" musicians.

All these things were done by notifying the record manufacturing companies that their licenses for the employment of members of defendant Union in making musical recordings would expire on a date fixed and would not be renewed and that thereafter the members would not make such recordings.

The purpose of the conspiracy, as set forth in the complaint, was:

> "• • • to eliminate from the market the manufacture, sale and use of musical compositions mechanically recorded on phonograph records and electrical transcriptions unless the persons engaged in such business enter into an agreement with the defendant union to hire such useless and unnecessary labor as the defendant union may demand; that a further purpose of said conspiracy is to exclude from the market the competition of anyone who does not exclusively employ members of the defendant union" (47 Fed. Supp. 304, 306).

The intent and effect of the conspiracy were that (p. 306):

> "• • • of unlawfully destroying all manufacture and sale in interstate commerce of phonograph records and electrical transcriptions; of eliminating all

> competition between music produced by mechanical means and music produced by live musicians; of depriving the public of an inexpensive means of entertainment over the air, in restaurants, hotels and dance halls and in the home."

The musicians' union was thus attempting to exclude manufacturers of mechanical music not merely from a local, but from the *national* market. The defendant Union was determined that the manufacturers should go out of business and with them the manufacturers of juke boxes, which utilized their products. Furthermore, in those instances where the radio station broadcast a transcribed record, it was to engage a "stand by" musician (the term defines itself) to stand by doing nothing except to draw his pay because the use of the transcription deprived him of an opportunity to work.

The Union was not interested in the slightest degree in improving the working conditions of the employees of the record manufacturers and of the juke box operators.

In support of the motion to dismiss, the defendants contended that the employer:

> "• • • merely alleges an agreement by members of a labor organization *peacefully to refuse to work for employers in an effort to obtain, extend and preserve employment opportunities* and that, accordingly, the Norris-LaGuardia Act, 29 U. S. C. A., Section 101 et seq. precludes the Court from granting the relief sought and that this is true even though it be assumed that a violation of the Sherman Anti-Trust Act has been alleged" (47 Fed. Supp. 304, 307). (Emphasis supplied.)

The District Court ruled in favor of the Union and said (p. 308):

> "The subject of the dispute is, generally speaking, the question as to whether the members of the union shall be employed to make all the music that is to be made or shall be employed to make only a part of it,

the remainder being made by means of phonograph records and electrical transcriptions and by amateur musicians. The union and its members contend that the members of the union should have the exclusive right to make music while the phonograph record and the electrical transcription manufacturers and broadcasting companies contend for the opportunity to have music made by means of phonograph records and electrical transcriptions and by amateurs.

"* * * The Court is satisfied that the union and its members and the employers of the latter are disputing in respect of a 'condition of employment' and that, accordingly, the dispute involved in this case is a 'labor dispute' within the meaning of the Norris-LaGuardia Act."

The "Hod Carriers'" case, cited as *United States* v. *Carrozzo*, 37 Fed. Supp. 191, aff'd sub nom. *U. S.* v. *International Hod Carriers*, 313 U. S. 539, in a per curiam decision, which cited merely *U. S.* v. *Hutcheson*, 312 U. S. 219, marks a further departure from the secondary boycott rule enunciated in the *Duplex Printing Press* and *Bedford Cut Stone* cases. The appeal came up on a demurrer to an indictment which had been sustained. The indictment charged a *conspiracy* to prevent the selling and delivery of truck mixers in and shipping them into the Chicago area in restraint of trade.

The opinion in the District Court recites the following facts:

The indictment charged that the defendant Hod Carriers Council had forced contractors in the Chicago area using truck mixers (a labor-saving device for making concrete en route to a job site) to employ the same number of men at the job site that they would have employed had the concrete been prepared at that point. *A working agreement to this effect between the union and the contractors was enforced by strikes and threats of strikes.* Building contractors in the Chicago area were prevented from using truck mixers on building projects by threats of strikes. The union refused to approve employment of

its members and ordered them not to work upon any building or paving project where truck mixers were used. Manufacturers of truck mixers and prospective purchasers were warned by the union that truck mixers were not permitted to be sold or used in the Chicago area. In short, there existed a conspiracy to prevent persons,

> "engaged in manufacture of truck mixers in states other than the State of Illinois, from selling and delivering truck mixers in, and shipping the same to the Chicago area, where they would enter into competition with other types of equipment, machines and devices employed in the production of concrete, and where their use would result in the reduction of the cost, and an improvement of the quality of the concrete to consumers" (Opinion of District Court, p. 194).

All this has a familiar ring. If we were to substitute "New York City" for "Chicago" and "electrical equipment" for "truck mixers" we would find ourselves talking about the instant case instead of about the Hod Carriers of Chicago.

In sustaining the demurrer and dismissing the indictment, the District Court wrote (p. 195):

> "(The Government contends) the use of truck mixers would result in a savings of labor costs through reduction of the number of men employed. Defendants insist that this is exactly what they are objecting to, and the purpose of the strikes, or threatened strikes, was to compel cement contractors in the Chicago area to accede to the union demands that the services of these engineers be retained on jobs where truck mixers are used; that these are activities within the legitimate objects of a labor union. * * * There appears to be nothing unreasonable in these demands, and only lawful means seem to have been used to accomplish them. I am of the opinion that defendants under such circumstances are immune from prosecution under the Sherman Act by reason of the provisions of the Norris-LaGuardia Act, which enlarges the scope of Section 20 of the Clayton Act."

To like effect:

U. S. v. *Local 807 etc.*, 118 Fed. (2d) 684, aff'd 315 U. S. 521.

See also:

New Negro Alliance v. *Sanitary Grocery*, 303 U. S. 552 (1938).

D. The defendants were not business associates of their employers. The agreements between them were collective bargaining agreements, obtained by strikes and other legitimate economic measures.

The plaintiffs have sought to evade the bar of the Norris-LaGuardia Act by stigmatizing the Union as one of a group of co-conspirators, the other parties to such conspiracy being the employers of its members. The Special Master, and in some measure, the District Court, adopted plaintiffs' view. The contention, however, is specious. It is based upon an extreme and distorted interpretation of some language found in the opinion of Mr. Justice Frankfurter in *United States* v. *Hutcheson*, 312 U. S. 219. The single issue in that case was said by the Justice in his opinion (p. 227) to be the following:

> "Whether the use of conventional, peaceful activities by a union in controversy with a rival union over certain jobs is a violation of the Sherman Law * * * is the question. It is sharply presented in this case because it arises in a criminal prosecution."

No charge of combination between the employer and either of the conflicting employee-groups was involved. The opinion (p. 232), however, contained the following language, which has been used by the plaintiffs herein to peg their argument charging an illicit combination:

> "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under Section 20 [of the Clayton Act]

> are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

The word "groups" in this sentence carries the following footnote in the opinion:

> "Cf. U. S. v. Brims, 272 U. S. 549, involving a conspiracy of mill work manufacturers, building contractors and union carpenters."

Plaintiffs deduce from this language and footnote an intent on the part of the Supreme Court to draw a sharp line of demarcation through the field of labor union activities. On one side of the line plaintiffs would place such activities as are not in combination with employer-groups. These they concede to be legal. On the other side of the line they would place those activities which are in combination with employer-groups. These, conversely, they contend are illegal. Merely to state the proposition is to disclose the fallacy.

It is true that if there is *no* combination between the Union and the employer-group, there can be no illegality, for a labor union itself, even though acting in restraint of trade, possesses statutory immunity.

The converse, however, is not *necessarily* true, and its truth cannot be determined until we have first decided what we mean by the word "combination". If we mean merely an "agreement", then the simple fact of there being an agreement between the two groups does not automatically taint such relationship with illegality. An agreement made by a union with an employer-group or, as the Circuit Court of Appeals terms it, an "armistice" between the two, is the goal toward which the Union strives when it exerts its economic pressure upon the employer. How else can a union achieve a truce in its controversy than in an agreement to which the contesting parties subscribe?

If, on the other hand, by "combination" between the employer and the Union is meant the making of an agreement

for the accomplishment of ends not recognized as legitimate union objectives; or an agreement in which the self-interest of the Union is subordinated to the private gain of the employer, in short, an agreement which seeks to cast over the employer the cloak of immunity, with which the Union alone is invested, and then only when pursuing its legitimate aims, then the "combination" is properly characterized as an "illicit combination".

The Circuit Court of Appeals, reasoning along similar lines, employed the following language (Op. p. 323):

> "• • •, it is not that combinations with non-labor groups are taboo, but only that when a union no longer acts in its self-interest and does so combine, then the licit and the illicit may have to be determined by a judgment as to the rightness or wrongness, etc., of the union end or purpose."

Continuing with this thought, the Circuit Court of Appeals, at page 324, contributes the following footnote:

> "See also *United States* v. *Bay Area Painters & Dec. Joint Com.*, D. C., N. D. Cal., 49 F. Supp. 733, 738, saying 'it would seem beyond belief' that Congress, having carefully protected the machinery of collective bargaining would then after the bargain has been made withdraw that protection and leave the parties liable for prosecution for criminal conspiracy, • • •."

The defendants are not the partners or business associates of the employer-groups. They are, rather, the dynamic force which has driven the employer-group to enter into agreements of limited duration satisfactory to the labor group. That these agreements at the same time leave room for the employers to survive does not affect the arrangement with illegality. Each of the groups—the employer and the employee—benefited from the collective bargaining agreements, for the very word "bargaining" implies a matter of "give and take". The benefits of each are independent benefits, and neither group directly shares in

the benefits accruing to the other. The strongest circumstance indicative that the Union's position is completely independent of any "combination" with its employers and that the plaintiffs cannot find a remedy for their hurts, except by prohibiting the Union from engaging in what are legitimate Union activities, is the fact that the Union need only stand its ground to retain all the benefits of its "work opportunity" campaign. The Union need only persist in its refusal to permit its members to install any electrical equipment not fabricated by others of its membership to achieve its ends. The Circuit Court of Appeals demonstrated this weakness of plaintiffs' position in the following language (Op. p. 321):

> "It seems clear, therefore, that the union members may refuse to work upon the plaintiffs' products; and, in view of the position of economic power which the union has now attained, that privilege is for practical purposes an almost complete shield for the defendants' acts which are most injurious to the plaintiffs. For all the other acts charged against the defendants may be barred; and yet if the union can hold its ranks together and keep its members from working upon plaintiffs' products, the Metropolitan Area will still be closed to them."

If the Union has a right to instruct its members not to work, except upon compliance by the employers with the demands above recited, then the fact that the local manufacturers and contractors have yielded to such demands, does not constitute their surrender an "illicit combination" with the Union.

In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, dec. 1940, plaintiffs, asking an injunction against the defendant labor union as an alleged combination in restraint of trade, adversely affecting plaintiffs' business, sought, as in the instant case, to tar the union with a charge that its activities were in the interest of and by *arrangement* with the employers of its members to enable the latter to secure a monopoly of the sale of milk in the City of Chicago.

The plaintiffs were an association of dairy workers referred to as "vendors", two Chicago dairies and a Wisconsin cooperative association which supplied milk to these dairies. The milk so supplied was in turn delivered by the "vendors" from the dairies to stores where it was sold at retail.

The membership of the defendant union consisted of drivers who were employed by wholesalers to make delivery of milk to the consuming public from door to door.

It was evident that any increase in the retail business of the plaintiffs occasioned a concomitant decrease in the door to door deliveries by the defendant drivers of the milk sold by their employers, with resultant reduction in employment. The defendant union, after trying other expedients unsuccessfully, began to picket the retail stores for the express purpose of reducing or eliminating milk deliveries by vendors from the dairies to the retail stores. To the extent that its campaign would be effective the employers of the defendant's members would obtain more business and better prices. The plaintiffs in fact so charged.

The Court, however, brushed aside the contention of the plaintiffs

> "* * * that the controversy is not a labor dispute within the meaning of the Norris-LaGuardia Act but is an unlawful secondary boycott of which the purpose is not to unionize the vendors but to obtain for the defendant employers a Chicago milk monopoly at a sustained high price level contrary to the Sherman Act" (p. 96).

Undoubtedly the employers of the defendant did benefit to the extent that business was thus diverted from the competing retail stores, but this did not convert a bargaining agreement between the defendant union and its employers who thus benefited into a conspiracy in restraint of trade within the meaning of the Sherman Act.

The Court said further (p. 102):

> "Whether or not one agrees with the Committee's opinion that the cited cases constitute an unduly restricted interpretation of the Clayton Act, one must agree that the committee and the Congress made abundantly clear their intention that what they regarded as the misinterpretation of the Clayton Act should not be repeated in the construction of the Norris-LaGuardia Act. For us to hold, in the face of this legislation, that the Federal Courts have jurisdiction to grant injunctions in cases growing out of labor disputes merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the act and would reverse the declared purpose of Congress."

E. Labor disputes as defined by the Norris-LaGuardia Act.

The phrase "labor dispute" is defined in Section 113 of Title 29, U. S. C. A. Congress, in its efforts to afford the maximum benefit to labor and to insure that the Act should not be turned in upon labor itself, as, in its opinion, the prior Clayton Act had been, went to great lengths to make the scope of the provisions as wide and indefinite as possible. Under subdivision (a) of Section 113, it is declared that a case is to be held to involve or grow out of a labor dispute when the persons involved merely have direct or *indirect* interests in the same industry, trade, craft or occupation. Further on, in the same subdivision, after specific relationships have been designated, Congress includes an all-embracing "or when the case involves any conflicting or competing interests in a 'labor dispute' as defined in this section of persons participating or interested therein" (as defined in this section).

In subdivision (b)—and again we mention only the most general language used—a person is held to be participating or interested in a labor dispute if relief is sought *against* him, or if he has a direct or *indirect* interest in the industry, trade, craft or occupation in which a dispute arises.

Subdivision (c), which defines the phrase "labor dispute", is equally broad and all embracing, including therein any controversy concerning terms and conditions of employment or a seeking to arrange terms and conditions of employment, *regardless of whether the disputants stand in the proximate relation of employer and employee.*

Thus it is not the interest of the *plaintiffs* nor of their *employees* that qualifies this controversy as a labor dispute. It is, rather, the advantage sought by the defendant Union for *itself* which makes lawful as incidental to a labor dispute the exercise of its economic pressure upon the local manufacturers and local contractors to the end that more jobs may be created for the members of the defendant Union and an agreement terminating the controversy obtained.

Following are several cases recently decided by this Court in which it was held that the fact that a union in making agreements for the benefit of its own members did not concern itself about benefiting the competitors of the employers of its members and did not or could not enter into similar agreements with such competitors in nowise affected the legality of such agreements.

In *United States* v. *American Federation of Musicians, supra,* the ultimate goal of the union was to enter into agreements with the broadcasting studios, which would have the effect of putting the manufacturers of "canned" music out of business and depriving their employees of employment.

In *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552, the plaintiff Alliance sought the discharge of white employees and their replacement by negroes. Inasmuch as the white employees could not qualify for employment if the Alliance prevailed, they, as third parties to the controversy, were destined to suffer without redress.

In *Milk Wagon Drivers' Union, Local No. 753 et al.* v. *Lake Valley Farm Products, Inc., et al., supra,* drivers, members of the defendant union, wanted for themselves the maximum amount of employment in delivering milk

from door to door to householders. Their activities, if successful, would have put the retail stores which made over the counter sales to these householders out of business so far as such sales were concerned.

In each instance, as in the present case, the success of the union in achieving its economic purpose in the struggle with the immediate employers of its members, brought or threatened to bring economic misfortune to employers or employees who were, in effect, third parties to the controversy and who could in nowise share in the benefits, if any, accruing to the parties to such controversy from any agreement ultimately entered into between them.

F. Both the District Court and the Special Master held that no labor dispute existed, although they disagreed as to the legal basis for such determination. Both, however, were in error.

The position of the Special Master as given in his opinion that no labor dispute existed has already been considered *supra*, pages 23-25. The defendants, so the Special Master found, were not trying to do anything for the benefit of plaintiffs' employees. They were interested only in themselves.

The District Judge in his memorandum opinion, although arriving at the same conclusion, acknowledged that he had done so by following a different path. Having stated its divergent view, the Court continued as follows (p. 156):

> "At any rate, if we accept the findings of fact, I believe it clear that the offense was not affected or instigated or promoted by a controversy which sprang from or involved the employer-employee relationship. I believe it clear also that, if so, it follows that the violation did not grow out of nor was it contributed to by a labor dispute within the meaning, nor would the awarding of an injunction infringe the public policy, of the Norris-LaGuardia Act. In that situation, the proposition that there was no such labor dispute seems to me *squarely sustained* by Columbia River Packers Association v. Hinton, 315 U. S. 143."

The single case, which the Court advanced as basis for its ruling was, however, in the writer's respectful opinion, misread. The *Columbia River* case was decided in 1942, with opinion by Mr. Justice Black. The opinion is brief and lucid. Of one thing we may be sure and that is that Justice Black did not imply that an ordinary workman is an independent contractor and an entrepreneur. What he did say was that a fisherman who owned a boat and occasionally employed workers and who sold his fish to processors was not an ordinary workman, but *was* such independent contractor and entrepreneur and, furthermore, if such fishermen formed an association, they did not form thereby a labor union but, rather, an association of business men. By no stretch of the imagination could this opinion be strained to hold that journeymen electricians, selling only their services, are independent contractors and entrepreneurs, and that their union is not a union at all but an association of business people.

In holding that *some* employer-employee relationship must exist before the protection of the Norris-LaGuardia Act can be claimed and in declaring that it was inapplicable to the parties involved in the *Columbia River* case, the Court in that case, at page 147, wrote as follows:

> "The controversy here is altogether between fish sellers and fish buyers. The sellers are not employees of the petitioners *or of any other employer* nor do they seek to be. On the contrary, their desire is to continue to operate as independent business men, free from such controls as an employer might exercise. That some of the fishermen have a small number of employees of their own, who are also members of the union, does not alter the situation. For the dispute here, relating solely to the sale of fish, does not place in controversy the wages or hours or other terms and conditions of employment of these employees." (Emphasis supplied.)

G. Congress intended the Norris-LaGuardia Act to be an anti-injunction law, and labor unions should, therefore, not lightly be barred from their organizational activity as allegedly violative of the Sherman Act.

The main lines of conduct of defendants charged as illegal by plaintiffs are the following:

(1) By picketing and strikes defendants compelled the contractors in the Metropolitan Area to hire only members of the Local;

(2) By picketing and strikes they compelled manufacturers in the Metropolitan Area to hire only members of the Local;

(3) By picketing and strikes they compelled the contractors to buy only from the Union manufacturers to the exclusion of the products of other manufacturers who did not hire their employees from among the membership of the defendant Local;

(4) Agreements covering the foregoing closed shop arrangements were entered into by the Union on the one hand and by contractors, singly or in groups, and by manufacturers, on the other;

(5) Such manufacturers did not object to the arrangement because through it they were enabled to sell more electrical equipment than theretofore;

(6) Nor did the contractors object to the arrangement because they made a profit on the equipment so bought.

Under the Norris-LaGuardia Act and under the cases we have cited herein, none of the foregoing acts, singly or in the aggregate, are illegal and none may be enjoined.

Section 104 of that Act contains nine categories of acts, which are not subject to restraining orders or injunctions. "*No Court of the United States shall have jurisdiction*" to restrain persons so protected from

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;"

(Does that not include the right to refuse to install the plaintiffs' unlabeled products because they were not manufactured by members of the defendant Local?)

"(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling or by any other method not involving fraud or violence;"

(Does this not imply that the defendant Union may picket jobs—yes, even those of the City of New York, which plaintiffs feel are sacrosanct—so that the public may be informed that no members of defendant Union's work in the factories where the electrical equipment being installed on such a job was manufactured?)

"(g) Advising or notifying any person of an intention to do any of the acts hereinbefore specified."

(Do not these few clear words instruct the defendant Union that its officers have full legal sanction to go to owners of buildings, to architects who file plans for their construction, to contractors who are to work upon them, and to builders who are to erect them and, in the case of the municipality, to its officials in charge of construction work, to all and sundry who employ electricians, and notify them that no member of the defendant Local will "perform any work" or "remain in any relation of employment" with such owner or other person, unless members of Local No. 3, and none others, are employed in the electrical work thereon and unless equipment produced in factories employing members of Local No. 3 and none other, is delivered to the journeymen electricians for installation at such job site?)

Section 104 is broad and liberal, but Congress intended an even broader and more liberal protection for labor. Congress was determined to cancel the *Duplex Printing Press* and *Bedford Cut Stone* cases as precedents so that labor would not again be confronted with a charge that its legitimate activities constituted combinations and con-

spiracies in restraint of trade, and so it enacted Section 105.

> "No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this Title."

Sections 104 and 105 have, thus, delimited the field within which the courts may, under no circumstances, enjoin an act done in the course of a labor dispute. Beyond the bounds of this prohibited area, injunctive relief may be granted under the Act, even though a labor dispute is involved.

Section 107(a) permits the courts to issue injunctions after findings of fact inter alia, to the effect: "(a) that *unlawful* acts have been threatened and will be committed unless restrained."

Congress has not defined what may constitute such "unlawful acts" which are thus enjoinable under Section 107 but, presumably, acts of fraud and violence fall within that classification.

But not even unbridled violence on the part of the Union and its members, the seizure of the employer's property, and the prevention of shipments of the employer's products during such time in interstate commerce, all done by a labor union to compel the employer to accept unionization of its plants, constitute the perpetrators a combination in restraint of trade. "Restraints, not within the Act, when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence." *Apex Hosiery Co.* v. *Leader, et al.*, 310 U. S. 469.

CONCLUSION

The legitimate objectives of the defendant Union concerning which the plaintiffs complain, namely, a closed shop, manned by members of the defendant Union and protected by Union labeling as to both fabrication and installation of electrical equipment, should not be thwarted or impeded by stigmatizing as the product of an illicit combination the very agreement which constitutes the embodiment of the collective bargaining between the contesting groups; nor should the plaintiffs, by indirection, in the form of a sweeping declaration of illegality or, directly, by writ of injunction, be permitted to circumvent the explicit immunities conferred by the Norris-LaGuardia Act upon persons qualifying thereunder as involved in a labor dispute, namely, that "No Court of the United States shall have jurisdiction" to restrain persons so protected from "Ceasing or refusing to perform any work or to remain in any relation of employment," etc. (Section 104).

The decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

702.—October Term, 1944.

Allen Bradley Company, et al., Petitioners, *vs.* Local Union No. 3, International Brotherhood of Electrical Workers, et al.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[June 18, 1945.]

Mr. Justice Black delivered the opinion of the Court.

The question presented is whether it is a violation of the Sherman Anti-trust Act[1] for labor unions and their members, prompted by a desire to get and hold jobs for themselves at good wages and under high working standards, to combine with employers and with manufacturers of goods to restrain competition in, and to monopolize the marketing of, such goods.

Upon the complaint of petitioners and after a lengthy hearing the District Court held that such a combination did violate the Sherman Act, entered a declaratory judgment to that effect, and entered an injunction restraining respondents from engaging in a wide range of specified activities. 41 F. Supp. 727, 51 F. Supp. 36. The Circuit Court of Appeals reversed the decision and dismissed the cause, holding that combinations of unions and business men which restrained trade and tended to monopoly were not in violation of the Act where the bona fide purpose of the unions was to raise wages, provide better working conditions, and bring about better conditions of employment for their members. 145 F. 2d 215. The Ninth Circuit Court of Appeals having reached a contrary conclusion in a similar case, 145 F. 2d 546, we granted certiorari in both cases.

The facts were sufficiently set out in the opinions below and need not be detailed again. The following summary will suffice for our purposes.

Petitioners are manufacturers of electrical equipment. Their places of manufacture are outside of New York City, and most of them are outside of New York State as well. They have

[1] 26 Stat. 209; 50 Stat. 693.

brought this action because of their desire to sell their products in New York City, a market area that has been closed to them through the activities of respondents and others.

Respondents are a labor union, its officals and its members. The union, Local No. 3 of the International Brotherhood of Electrical Workers, has jurisdiction only over the metropolitan area of New York City. It is therefore impossible for the union to enter into a collective bargaining agreement with petitioners. Some of petitioners do have collective bargaining agreements with other unions, and in some cases even with other locals of the I. B. E. W.

Some of the members of respondent union work for manufacturers who produce electrical equipment similar to that made by petitioners; other members of respondent union are employed by contractors and work on the installation of electrical equipment, rather than in its production.

The union's consistent aim for many years has been to expand its membership, to obtain shorter hours and increased wages, and to enlarge employment opportunities for its members. To achieve this latter goal—that is, to make more work for its own members—the union realized that local manufacturers, employers of the local members, must have the widest possible outlets for their product. The union therefore waged aggressive campaigns to obtain closed shop agreements with all local electrical equipment manufacturers and contractors. Using conventional labor union methods, such as strikes and boycotts, it gradually obtained more and more closed shop agreements in the New York City area. Under these agreements, contractors were obligated to purchase equipment from none but local manufacturers who also had closed shop agreements with Local No 3; manufacturers obligated themselves to confine their New York City sales to contractors employing the Local's members. In the course of time, this type of individual employer-employee agreement expanded into industry-wide understandings, looking not merely to terms and conditions of employment but also to price and market control. Agencies were set up composed of representatives of all three groups to boycott recalcitrant local contractors and manufacturers and to bar from the area equipment manufactured outside its boundaries. The combination among the three groups, union, contractors, and manufacturers, became highly successful from the standpoint of all of

them. The business of New York City manufacturers had a phenomenal growth thereby multiplying the jobs available for the Local's members. Wages went up, hours were shortened, and the New York electrical equipment prices soared, to the decided financial profit of local contractors and manufacturers. The success is illustrated by the fact that some New York manufacturers sold their goods in the protected city market at one price and sold identical goods outside of New York at a far lower price. All of this took place, as the Circuit Court of Appeals declared, "through the stifling of competition", and because the three groups, in combination as "co-partners", achieved "a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs." Interstate sale of various types of electrical equipment has, by this powerful combination, been wholly suppressed.

Quite obviously, this combination of business men has violated both Sections (1) and (2) of the Sherman Act,[2] unless its conduct is immunized by the participation of the union. For it intended to and did restrain trade in and monopolize the supply of electrical equipment in the New York City area to the exclusion of equipment manufactured in and shipped from other states, and did also control its price and discriminate between its would-be customers. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 512-513. Our problem in this case is therefore a very narrow one—do labor unions violate the Sherman Act when, in order to further their own interests as wage earners, they aid and abet business men to do the precise things which that Act prohibits?

The Sherman Act as originally passed contained no language expressly exempting any labor union activities. Sharp controversy soon arose as to whether the Act applied to unions. One viewpoint was that the only evil at which Congress had aimed was high consumer prices achieved through combinations looking to control of markets by powerful groups; that those who would have a great incentive for such combinations would be the business men who would be the direct beneficiaries of them; therefore, the

[2] Sections 1 and 2 provide in part as follows:

"Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . .

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, . . ."

argument proceeded, Congress drafted its law to apply only to business combinations, particularly the large trusts, and not to labor unions or any of their activities as such. Involved in this viewpoint were the following contentions: that the Sherman Act is a law to regulate trade, not labor, a law to prescribe the rules governing barter and sale, and not the personal relations of employers and employees; that good wages and working conditions helped and did not hinder trade, even though increased labor costs might be reflected in the cost of products; that labor was not a commodity; that laborers had an inherent right to accept or terminate employment at their own will, either separately or in concert; that to enforce their claims for better wages and working conditions, they had a right to refuse to buy goods from their employer or anybody else; that what they could do to aid their cause, they had a right to persuade others to do; and that the Anti-trust laws designed to regulate trading were unsuitable to regulate employer-employee relations and controversies. The claim was that the history of the legislation supported this line of argument.[3]

The contrary viewpoint was that the Act covered all classes of people and all types of combinations, including unions, if their activities even physically interrupted the free flow of trade or tended to create business monopolies, and that a combination of laborers to obtain a raise in wages was itself a prohibited monopoly. Federal courts adopted the latter view and soon applied the law to unions in a number of cases.[4] Injunctions were used to enforce the Act against unions. At the same time employers invoked injunctions to restrain labor union activities even where no violation of the Sherman Act was charged.

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[3] For a comprehensive discussion of the history of the Sherman Act, see 51 Cong. Rec. 13661-13668, 63rd Cong., 2nd Sess. And see *Ibid.*, 13969-13971, 14013-14016, 14020-14023. See also Berman, Labor and The Sherman Act (1930), pp. 1-98; Mason, Organized Labor and The Law, Chapters 7 & 8; Gompers, "The Sherman Law. Amend It Or End It", American Federationist, Vol. 17, No. 3, March, 1910, pp. 197, 202. For prior discussions in this Court of the dominant concern of Congress to protect consumers from business combinations, see United States *v.* Trans-Missouri Freight Assn., 166 U. S. 290; Standard Oil Co. *v.* United States, 221 U. S. 1; Apex Hosiery Co. *v.* Leader, 310 U. S. 469; United States *v.* Underwriters' Assn., 322 U. S. 533.

[4] See note 3, *supra*. See also 51 Cong. Rec. 9068-9077; 9081-9091; United States *v.* Amalgamated Counsel, 54 F. 994 (1893); Waterhouse et al. *v.* Comer, 55 F. 149 (1893); United States *v.* Debs et al., 64 F. 724 (1894); Loewe *v.* Lawler, 208 U. S. 274, 235 U. S. 522. And see Appendix to Berman, *op. cit.*, *supra*.

Vigorous protests arose from employee groups. The unions urged congressional relief from what they considered to be two separate, but partially overlapping evils—application of the Sherman Act to unions, and issuance of injunctions against strikes, boycotts and other labor union weapons. Numerous bills to curb injunctions were offered. Other proposed legislation was intended to take labor unions wholly outside any possible application of the Sherman Act. All of this is a part of the well known history of the era between 1890 and 1914.[5]

To amend, supplement and strengthen the Sherman Act against monopolistic business practices and in response to the complaints of the unions against injunctions and application of the Act to them, Congress in 1914 passed the Clayton Act.[6] Elimination of those "trade practices" which injuriously affected competition was its first objective.[7] Each section of the measure prohibiting such trade practices contained language peculiarly appropriate to commercial transactions as distinguished from labor union activities, but there is no record indication in anything that was said or done in its passage which indicates that those engaged in business could escape its or the Sherman Act's prohibitions by obtaining the help of labor unions or others. That this bill was intended to make it all the more certain that competition should be the rule in all commercial transactions is clear from its language and history.

In its treatment of labor unions and their activities the Clayton Act pointed in an opposite direction. Congress in that Act responded to the prolonged complaints[8] concerning application of the Sherman law to labor groups by adopting Section 6,[9] for this purpose, and also drastically to restrict the general power

[5] See authorities cited in footnotes 3 and 4, *supra*. And see Frankfurter and Greene, The Labor Injunction (1930); Berman, *op. cit. supra*, pp. 99-117.

[6] 38 Stat. 730.

[7] Senate Report No. 698, 63rd Cong., 2nd Sess.

[8] *Ibid.*, 10-12.

[9] Section 6 reads as follows: "That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws."

of federal courts to issue labor injunctions, Section 20[10] was adopted. Section 6 declared that labor was neither a commodity nor an article of commerce, and that the Sherman Act should not be "construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help . . . ." Section 20 limited the power of courts to issue injunctions in a case "involving or growing out of a labor dispute over terms or conditions of employment . . . ." It declared that no restraining order or injunction should prohibit certain specified acts, and further declared that no one of these specified acts should be "held to be violations of any law of the United States" This Act was broadly proclaimed by many as labor's "Magna Carta", wholly exempting labor from any possible inclusion in the Anti-trust legislation; others, however, strongly denied this.

This Court later declined to interpret the Clayton Act as manifesting a congressional purpose wholly to exempt labor unions from the Sherman Act. *Duplex Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters Assn.*, 274 U. S. 37. In those cases labor unions had engaged in a secondary boycott; they had boycotted dealers, by whom the union members were not employed, because those dealers insisted on selling goods produced by the employers with whom the unions had an existing controversy over terms and conditions of employment. This Court held that the Clayton Act exempted labor union activities only insofar as those activities were directed against the employees' immediate employers and that controversies over the sale of goods by other dealers did not constitute "labor disputes" within the meaning of the Clayton Act.

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[10] Section 20 reads in part as follows: "And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

Again the unions went to Congress. They protested against this Court's interpretation, repeating the arguments they had made against application of the Sherman Act to them. Congress adopted their viewpoint, at least in large part, and in order to escape the effect of the *Duplex* and *Bedford* decisions,[11] passed the Norris-La Guardia Act, 47 Stat. 71. That Act greatly broadened the meaning this Court had attributed to the words "labor dispute", further restricted the use of injunctions in such a dispute, and emphasized the public importance under modern economic conditions of protecting the rights of employees to organize into unions and to engage in "concerted activities for the purpose of collective bargaining or other mutual aid and protection." This congressional purpose found further expression in the Wagner Act, 49 Stat. 449.

We said in *Apex Hosiery Co.* v. *Leader, supra,* 448, that labor unions are still subject to the Sherman Act to "some extent not defined". The opinion in that case, however, went on to explain that the Sherman Act "was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern"; that its purpose was to protect consumers from monopoly prices, and not to serve as a comprehensive code to regulate and police all kinds and types of interruptions and obstructions to the flow of trade. This was a recognition of the fact that Congress had accepted the arguments made continuously since 1890 by groups opposing application of the Sherman Act to unions. It was an interpretation commanded by a fair consideration of the full history of Anti-trust and labor legislation.

United States v. *Hutcheson,* 312 U. S. 219, declared that the Sherman, Clayton and Norris-La Guardia Act must be jointly considered in arriving at a conclusion as to whether labor union activities run counter to the Anti-trust legislation. Conduct which they permit is not to be declared a violation of federal law. That decision held that the doctrine of the *Duplex* and *Bedford* cases was inconsistent with the congressional policy set out in the three "interlacing statutes."

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[11] Milk Wagon Drivers' Union, Local No. 753 *v.* Lake Valley Farm Products, Inc., 311 U. S. 91; New Negro Alliance *v.* Sanitary Grocery Co., 303 U. S. 552.

The result of all this is that we have two declared congressional policies which it is our responsibility to try to reconcile. The one seeks to preserve a competitive business economy; the other to preserve the rights of labor to organize to better its conditions through the agency of collective bargaining. We must determine here how far Congress intended activities under one of these policies to neutralize the results envisioned by the other.

Aside from the fact that the labor union here acted in combination with the contractors and manufacturers, the means it adopted to contribute to the combination's purpose fall squarely within the "specified acts" declared by Section 20 not to be violations of federal law.[12] For the union's contribution to the trade boycott was accomplished through threats that unless their employers bought their goods from local manufacturers the union laborers would terminate the "relation of employment" with them and cease to perform "work or labor" for them; and through their "recommending, advising, or persuading others by peaceful and lawful means" not to "patronize" sellers of the boycotted electrical equipment. Consequently, under our holdings in the *Hutcheson* case and other cases which followed it,[13] had there been no union-contractor-manufacturer combination the union's actions here, coming as they did within the exemptions of the Clayton and Norris-La Guardia Acts, would not have been violations of the Sherman Act. We pass to the question of whether unions can with impunity aid and abet business men who are violating the Act.

On two occasions this Court has held that the Sherman Act was violated by a combination of labor unions and business men to restrain trade.[14] In neither of them was the Court's attention

[12] It has been argued that no labor disputes existed. The argument is untenable. We do not have here, as we did in Columbia River Packers' Association *v.* Hinton, 315 U. S. 143, a dispute between groups of business men revolving solely around the price at which one group would sell commodities to another group. On the contrary, Local No. 3 is a labor union and its spur to action related to wages and working conditions.

[13] United States *v.* Building and Construction Trades Council, 313 U. S. 539; United States *v.* United Brotherhood of Carpenters and Joiners of America, 313 U. S. 539; United States *v.* International Hod Carriers and Common Laborers' District Council, 313 U. S. 539; United States *v.* American Federation of Musicians, 318 U. S. 741.

[14] United States *v.* Brims, 272 U. S. 549; Local 167 *v.* United States, 291 U. S. 293.

sharply called to the crucial questions here presented. Furthermore, both were decided before the passage of the Norris-La Guardia Act, and prior to our holding in the *Hutcheson* case. It is correctly argued by respondents that these factors greatly detract from the weight which the two cases might otherwise have in the instant case. See *United States* v. *Hutcheson, supra*, 236. Without regard to these cases, however, we think Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create business monopolies and to control the marketing of goods and services.

Section 6 of the Clayton Act declares that the Sherman Act must not be so construed as to forbid the "existence and operation of labor, agricultural, or horticultural organizations instituted for the purpose of mutual help . . . ." But "the purpose of mutual help" can hardly be thought to cover activities for the purpose of "employer-help" in controlling markets and prices. And in an analogous situation where an agricultural association joined with other groups to control the agricultural market, we said:

> "The right of these agricultural producers thus to unite in preparing for market and in marketing their products, and to make the contracts which are necessary for that collaboration, cannot be deemed to authorize any combination of conspiracy *with other persons* in restraint of trade that these producers may see fit to devise." *United States* v. *Borden Co.*, 308 U. S. 188, 204-205. (Italics supplied.)

We have been pointed to no language in any act of Congress or in its reports or debates, nor have we found any, which indicates that it was ever suggested, considered, or legislatively determined that labor unions should be granted an immunity such as is sought in the present case. It has been argued that this immunity can be inferred from a union's right to make bargaining agreements with its employer. Since union members can without violating the Sherman Act strike to enforce a union boycott of goods, it is said they may settle the strike by getting their employers to agree to refuse to buy the goods. Employers and the union did here make bargaining agreements in which the employers agreed not to buy goods manufactured by companies which did not employ the members of Local No. 3. We may assume that such an agreement standing alone would not have violated the Sherman Act. But it did not stand alone. It was but one

element in a far larger program in which contractors and manufacturers united with one another to monopolize all the business in New York City, to bar all other business men from that area, and to charge the public prices above a competitive level. It is true that victory of the union in its disputes, even had the union acted alone, might have added to the cost of goods, or might have resulted in individual refusals of all of their employers to buy electrical equipment not made by Local No. 3. So far as the union might have achieved this result acting alone, it would have been the natural consequence of labor union activities exempted by the Clayton Act from the coverage of the Sherman Act. *Apex Hosiery Co.* v. *Leader, supra,* 503. But when the unions participated with a combination of business men who had complete power to eliminate all competition among themselves and to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-La Guardia Acts.

It must be remembered that the exemptions granted the unions were special exceptions to a general legislative plan. The primary objective of all the Anti-trust legislation has been to preserve business competition and to proscribe business monopoly. It would be a surprising thing if Congress, in order to prevent a misapplication of that legislation to labor unions, had bestowed upon such unions complete and unreviewable authority to aid business groups to frustrate its primary objective. For if business groups, by combining with labor unions, can fix prices and divide up markets, it was little more than a futile gesture for Congress to prohibit price fixing by business groups themselves. Seldom, if ever, has it been claimed before, that by permitting labor unions to carry on their own activities, Congress intended completely to abdicate its constitutional power to regulate interstate commerce and to empower interested business groups to shift our society from a competitive to a monopolistic economy. Finding no purpose of Congress to immunize labor unions who add and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act.

Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. This, it is argued, brings about a wholly undesirable re-

sult—one which leaves labor unions free to engage in conduct which restrains trade. But the desirability of such an exemption of labor unions is a question for the determination of Congress. *Apex Hosiery Co.* v. *Leader, supra.* It is true that many labor union activities do substantially interrupt the course of trade and that these activities, lifted out of the prohibitions of the Sherman Act, include substantially all, if not all, of the normal peaceful activities of labor unions. It is also true that the Sherman Act "draws no distinction between the restraints effected by violence and those achieved by peaceful means . . . ", *Apex Hosiery Co.* v. *Leader, supra,* 513, and that a union's exemption from the Sherman Act is not to be determined by a judicial "judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means." *United States* v. *Hutcheson, supra,* 232. Thus, these congressionally permitted union activities may restrain trade in and of themselves. There is no denying the fact that many of them do so, both directly and indirectly. Congress evidently concluded, however, that the chief objective of Anti-trust legislation, preservation of business competition, could be accomplished by applying the legislation primarily only to those business groups which are directly interested in destroying competition. The difficulty of drawing legislation primarily aimed at trusts and monopolies so that it could also be applied to labor organizations without impairing the collective bargaining and related rights of those organizations has been emphasized both by congressional and judicial attempts to draw lines between permissible and prohibited union activities. There is, however, one line which we can draw with assurance that we follow the congressional purpose. We know that Congress feared the concentrated power of business organizations to dominate markets and prices. It intended to outlaw business monopolies. A business monopoly is no less such because a union participates, and such participation is a violation of the Act.

This brings us to a consideration of the scope of the declaratory judgment and the injunction granted by the district court. We cannot sustain the judgment or the injunction in the form in which they were entered. The judgment and the injunction apply only to the union, its members, and its agents, since they were the only parties against whom relief was asked. The judgment de-

clared that "the combination and conspiracy and the acts done and being done in furtherance thereof all as set forth in the findings of fact herein are unlawful and contrary to the . . . . Sherman Anti-Trust Law, as amended and supplemented." There were 374 findings of fact which cover 111 pages of the printed record. These findings were made from 25000 pages of evidence. The declaratory judgment, which was the foundation for the injunction, is thus almost the equivalent of a statement that each fact "as set forth in the 374 findings" constituted a violation of the Sherman Act. And when we turn to the sweeping commands of the injunction, we find that its terms, directed against the union and its agents alone, restrained the union, even though not acting in concert with the manufacturers, from doing the very things that the Clayton Act specifically permits unions to do. We agree with the following statement of the Circuit Court of Appeals:

> "Indeed, the injunction is so far contrary to the statute that its mandate might well have been stated in the converse of the terms of the Clayton Act, Section 20, viz., as restraining Local 3 and its officers 'from terminating any relation of employment, or from ceasing to perform any work or labor . . . or from ceasing to patronize . . . any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do.' 29 U. S. C. A., Section 52, *supra*. And the vague scope of the declaratory judgment is even more indefinitely inclusive, in terms reaching all the activities of the defendant set forth in the findings."

Respondents objected to the form of the injunction and specifically requested that it be amended so as to enjoin only those prohibited activities in which the union engaged in combination "with any person, firm or corporation which is a non-labor group . . . ." Without such a limitation, the injunction as issued runs directly counter to the Clayton and the Norris-La Guardia Acts. The district court's refusal so to limit it was error.

The judgment of the Circuit Court of Appeals ordering the action dismissed is accordingly reversed and the cause is remanded to the district court for modification and clarification of the judgment and injunction, consistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES.

No. 702.—October Term, 1944.

Allen Bradley Company, et al., Petitioners, vs. Local Union No. 3, International Brotherhood of Electrical Workers, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[June 18, 1945.]

Mr. Justice Murphy, dissenting.

My disagreement with the Court rests not so much with the legal principles announced as with the application of those principles to the facts of the case.

If the union in this instance had acted alone in its self-interest, resulting in a restraint of interstate trade, the Sherman Act concededly would be inapplicable. But if the union had aided and abetted manufacturers or traders in violating the Act, the union's statutory immunity would disappear. I cannot agree, however, that the circumstances of this case demand the invocation of the latter rule.

The union here has not in any true sense "aided" or "abetted" a primary violation of the Act by the employers. In the words of the union, it has been "the dynamic force which has driven the employer-group to enter into agreements" whereby trade has been affected. The fact that the union has expressed its self-interest with the aid of others rather than solely by its own activities should not be decisive of statutory liability. What is legal if done alone should not become illegal if done with the assistance of others and with the same purpose in mind. Otherwise a premium of unlawfulness is placed on collective bargaining.

Had the employers embarked upon a course of unreasonable trade restraints and had they sought to immunize themselves from the Sherman Act by using the union as a shield for their nefarious practices, we would have quite a different case. The union then could not be said to be acting in its self-interest in combining with the employers to carry out trade restraints primarily for the employers' interests, even though incidental benefits might accrue to the union. Under such conditions the union fairly could be said to be aiding and abetting a violation of the Act and its immunity would be lost. The facts of this case, however, do not allow such conclusions to be drawn.

I would therefore affirm the judgment of the court below.

SUPREME COURT OF THE UNITED STATES.

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[June 18, 1945.]

Mr. Justice Roberts.

While I should reverse the judgment, I am unable to concur in the court's opinion. I think it conveys an incorrect impression of the genesis and character of the conspiracy charged in the complaint, and misapplies recent decisions of the court.

There is no doubt that the programme adopted by Local No. 3 envisaged the exclusion, from the entire New York City area, of any electrical workers, whether engaged in manufacturing or installing electrical devices and equipment, except members of the Local. The organization from time to time increased the classes of members, so as to add to its original membership of workers engaged in fabricating and installing electrical devices, equipment, and apparatus the additional categories of shop employes engaged in manufacturing electrical equipment and all workers employed in alterations, additions, and repairs involving electrical equipment. It succeeded in unionizing and imposing closed shops employing only members of Local 3, not only on all building contractors, but on all repair contractors and their establishments and all manufacturers of electrical equipment. Membership in the union was closely restricted and the campaign eventuated in a situation where no electrical work could be done by persons other than members of the union, no building construction could be done by other than union men, no matter what their trade, and no manufactured electrical appliance or apparatus could be installed in the New York area without the consent of Local No. 3. That consent was given only if the device, appliance or apparatus was manufactured, or work done on it, by members

of the Local. Complicated apparatus which had to be manufactured outside New York City, because no establishment making it existed within the city, had to be dismantled and rebuilt by members of the Local before it could be used in the New York area.

It is true that before Local No. 3 obtained this complete control of the industry in its area of operation certain associated building contractors dealt jointly as an association with the union. As respects certain manufacturers which came under the dominance of the union this is not true. Nor is it true of repair businesses. On the contrary, it is the fact that each one of these was individually coerced by the union's power to agree to its terms. It is, therefore, inaccurate to say that the employers used the union to aid and abet them to restrain interstate commerce. Some of the employers, notably the building contractors, did jointly cooperate with the union; other sorts of employers were forced individually to comply with the union's demands, until all of them had succumbed.

There can be no question of the purpose of the union. It was to exclude from use in the City of New York articles of commerce made outside the city and offered for sale to users within the city; it was completely to monopolize the manufacture and sale of all electrical equipment and devices within New York, and to exclude from use in the area every such article manufactured outside the city, whether in a closed union shop or not. The results of this programme are obvious. Interstate commerce between New York City and manufacturers having establishments outside the city was completely broken off, and the monopoly created raised, standardized and fixed the prices of merchandise and apparatus.

As I understand the opinion of the court, such a programme, and such a result, is wholly within the law provided only that employers do not jointly agree to comply with the union's demands. Unless I misread the opinion, the union is at liberty to impose every term and condition as shown by the record in this case and to enforce those conditions and procure an agreement from each employer to such conditions by calling strikes, by lockout, and boycott, provided only such employer agrees for himself alone and not in concert with any other.

I point out again, as respects certain employers here concerned, that that is the situation, whereas, with respect to the building construction employers, there was mutual agreement with the union. But the opinion takes no note of the distinction in fact. It seems to me that the law as announced by the court creates an impossible situation such as Congress never contemplated and leaves commerce paralyzed beyond escape.

Until *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, was decided I had thought that a conspiracy by laborers to interrupt the free flow of commerce was a violation of the Sherman Act. That case, however, announced a narrower doctrine. Its teaching is that only activity of labor which harms the commercial competitive system through raising prices, restricting production, or otherwise controlling the market, falls within the proscription of the Sherman Act. In that case it was said:

"Furthermore, successful union activity, as for example consummation of a wage agreement with employers, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards. Since, in order to render a labor combination effective it must eliminate the competition from non-union made goods, *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209, an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act."

It was added that the restraint there under examination was not shown "to have any actual or intended effect on price or price competition." The decision indicated that, in some undefined circumstances, labor organizations might be subject to the statute.

In *Hutcheson* v. *United States*, 312 U. S. 219, secondary boycotts by labor unions to keep out of the market nonunion goods, or goods worked on by other unions, were held immune from liability, civil or criminal, under the Sherman Act. It was there said:

"So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and the illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means."

Thus, although a conspiracy between laborers is distinguished from one between them and employers, it is intimated, as I think, that a purpose on the part of a labor group to harm the commercial competitive system, to raise prices, to restrict production, or otherwise control the market, would not render the concerted action illegal, provided only that no employer participated. The reservation made in the *Apex* case was discarded in the *Hutcheson* case. This advance in the law was emphasized in *United States* v. *Building & Construction Trades Council*, 313 U. S. 539, and *United States* v. *United Brotherhood of Carpenters and Joiners*, 313 U. S. 539, but the court went even farther, in *United States* v. *American Federation of Musicians*, 318 U. S. 741, and, as I think, rendered a decision contrary to that now announced. There a motion to dismiss a bill of complaint was granted and this court sustained that action. The complaint charged a conspiracy by the American Federation of Musicians, a nationwide organization, and its officers, to obtain employment for its members by eliminating entirely from interstate commerce all phonograph records and electrical transcriptions of music and eliminating all competition between transcribed music and that produced by living musicians. The conspiracy charged was absolutely to prevent manufacture or sale of phonograph records and electrical transcriptions; to eliminate from the market all manufacturers, distributors, jobbers or retailers of the same, and to prevent the use of the articles, either in public places or private homes, and, of course, to prevent their sale. In the bill it was charged that the conspiracy did not grow out of or involve any dispute concerning terms or conditions of employment; that the purpose of the conspiracy was to eliminate from the market, manufacture, sale and use of mechanical recordings and records and transcriptions unless the persons engaged in this business should enter into agreements with the union, hiring useless and unnecessary labor, as the union would demand. The further purpose of the conspiracy charged was to exclude from the market competition by anyone who failed exclusively to employ members of the union. The complaint further charged that the purpose and effect of the conspiracy was unlawfully to destroy all manufacture and sale, in interstate commerce, of phonograph records and electrical transcriptions, eliminate all competition between music produced by mechanical means and music produced by living musicians, to deprive the public

of an inexpensive means of entertainment in public places and in the home.

This court's affirmance of the dismissal of this complaint can only mean that every business-man who desires to stay in business must if a union so demands enter into an agreement with the union eliminating certain articles from his manufacture, from his sales, or from his use. The decision must necessarily mean that it would not be unlawful to enter into such an agreement with the union, otherwise we should have the anomaly that the union's demand for such an agreement is impeccable but the employer's acquiescence is unlawful. As shown by the opinion of the District Court in that case (47 F. Supp. 304) the Government contended that the Union's effort represented "an attempt by the union to force employers to combine with it for the purpose of restraining interstate trade" . . . . The District Court shortly answered this contention (p. 309) by saying: "In the court's opinion, *United States* v. *Brims*, 272 U. S. 549, . . . and like cases, are not pertinent." This must mean that each employer, in the instant case, is at liberty to agree with the union on all the terms and conditions which create a complete monopoly, a complete boycott, a complete closing of the market, and a serious price fixing affecting competitive commercial transactions. This is what I understand the court now holds. This is what was accomplished with impunity by the Federation of Musicians. But the situation created by such a holding is unreal.

As I have pointed out, in two branches of the industry, the manufacturers and employers, one by one, succumbed to union pressure and entered into agreements. Was not such an action, in each instance, a conspiracy? Are more than two parties required to conspire, and did not each of those conspiracies, to some extent, hinder and restrain interstate commerce and affect the market and the competitive price situation? As each agreement was consummated the market was, to that extent, closed and the boycott against out-of-the-city manufactures tightened.

But more. The union did not conduct its campaign in a corner. Albeit the findings are that manufacturers and repairers of electrical appliances violently resisted the unionization of their businesses, they, one by one, surrendered and signed. In doing so many must have had knowledge of what others were doing or had

done. And, as the coverage became complete, each one was enabled to stifle out of town competition and to raise prices. In any action against them and the union charging conspiracy it would be urged that a conspiracy need not consist of a written or verbal agreement but might be inferred from similarity of action. And it would be little protection to the employers concerned that, in each instance, a separate agreement was signed between union and employer.

The course of decision in this court has now created a situation in which, by concerted action, unions may set up a wall around a municipality of millions of inhabitants against importation of any goods if the union is careful to make separate contracts with each employer, and if union and employers are able to convince the court that, while all employers have such agreements, each acted independently in making them,—this notwithstanding the avowed purpose to exclude goods not made in that city by the members of the union; notwithstanding the fact that the purpose and inevitable result is the stifling of competition in interstate trade and the creation of a monopoly.

The only answer I find in the opinion of the court is that Congress has so provided. I think it has not provided any such thing and that the figmentary difference between employers negotiating jointly with the only union with which they can deal,—which imposes like conditions on all employers—and each employer dealing separately with the same union is unrealistic and unworkable. And the language of § 20 of the Clayton Act makes no such distinction.

This court, as a result of its past decisions, is in the predicament that whatever it decides must entail disastrous results. I can understand that the Circuit Court of Appeals felt constrained by the prior decisions of this court to order the judgment of the District Court reversed and the action dismissed. If the present decision is, as I think, a retrogression from earlier holdings, I welcome it; if it is but a limitation of them I concur in the partial alleviation of an impossible situation. But I would not limit the injunction as the opinion directs.